ADMINISTRATIVE LAW

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ADMINISTRATIVE LAW SECTION of AMERICAN BAR ASSOCATION

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Nothing contained herein shall be construed as the action of the American Bar Association unless the same shall have been first approved by the House of Delegates or the Board of Governors.

CHAIRMAN'S PAGE

Section Consideration of Hoover Commission Reports

The Report of the Hoover Commission on Legal Services and Procedure and the Report of its Task Force on that subject present to the Section an opportunity and an obligation of the greatest importance. The Council, at a meeting held in Washington on May 21-22, voted to make this the major subject of consideration at the annual meeting in August, and to extend the period of the meeting to allow time for adequate consideration. Meanwhile the reports have been assigned to the various committees of the Section for intensive study of matters falling within their particular fields of special interest. Many of the recommendations of the reports have been thus assigned to more than one Section committee.

Members of the Section who desire to express views on subjects covered by the reports are invited to submit their comments through Donald C. Beelar, Chairman of the National Committee, World Center Building, Washington 6. It would be appreciated if you would submit eight copies of such comments, to permit distribution to interested committees and to the Section officers.

I regret that the Section has not been able to purchase copies of the reports for distribution to the Section membership. You will, however, find in the later pages of this issue an article on the reports by the Editor of the Bulletin and, following that, the text of the Administrative Code proposed by the Task Force, with (in parallel columns) its sectional analysis of the Code.

Association Special Committee

At its May meeting the Board of Governors authorized the President of the Asso-

ciation to appoint a Special Committee on Legal Services and Procedure to review the reports of the Hoover Commission, of its Task Force on Legal Services and Procedure, and of the President's Conference on Administrative Procedure. The President has appointed Ashley Sellers, our Section Delegate, Chairman of this committee, and has appointed the Section Chairman and Vice-Chairman members of the committee. The committee includes also members of other Association sections and committees concerned with matters within the scope of the reports.

Plans for Annual Meeting

Primarily to allow adequate time for consideration of the Hoover Commission reports, the meetings of the Section in connection with the annual meeting of the Association in Philadelphia have been extended. The Section will meet on Monday afternoon, August 22, all day Tuesday, August 23, and Wednesday morning, August 24. All of Tuesday, starting with a breakfast meeting to be held jointly with the Federal Bar Association, will be devoted to consideration of the Hoover Commission reports and related recommendations of the President's Conference on Administrative Procedure. The Monday afternoon session will include a program on the procedures of, and practice before, the various Boards of Contract Appeals. The rest of the Monday afternoon session and the Wednesday morning session will be taken up with various Section committee reports and other Section business. A full program will appear in the next issue of the Bulletin.

The Council has voted also to extend the period of its own meetings, before the Section meetings. It will meet all day Friday, Saturday and Sunday, August 19-21. As is customary, Section committee chairmen and vice-chairmen are invited to attend these Council meetings. In addition, because of the importance of the Section's activity with respect to the reports of the Hoover Commission and related recommendations of the President's Conference on Administrative Procedure, the Council invites the general Section membership to attend its meetings at which these subjects will be considered, i.e., the Saturday meeting and part of the Sunday meeting. Since the space reserved for the Council meetings is limited, it is earnestly requested that any members who plan to attend these Council sessions promptly inform the Secretary, Miss Patricia H. Collins, Department of Justice, Washington 25.

Section Finances

I am glad to report that the request for voluntary contributions to the work of the Section for the current Association year has resulted in contributions aggregating $1,380. This gratifying result has enabled the Section to meet a considerable part of the expenses of conducting committee business. Largely, I think, on the basis of this evidence of our willingness to help ourselves, the Board of Governors has substantially increased for the next fiscal year the appropriation by the Association to the Section. This combination of events will make it possible in the future to enlist

members in active Section work without imposing on them an undue financial burden.

ROBERT M. BENJAMIN
Chairman

ADMINISTRATIVE AGENCY FEES AND CHARGES

The March issue of the Bulletin (7 Ad. L. Bul. 45-7) set forth the resolution on the subject of administrative agency fees and charges adopted by the House of Delegates at its 1955 midyear meeting on motion of the Section, and the statement of reasons submitted by the Section to the House in support of the resolution.

On May 20 Donald C. Beelar, Chairman of the National Committee, accompanied by the Section Chairman, appeared before Senator Magnuson's Subcommittee on Independent Offices Appropriations of the Senate Committee on Appropriations in support of the resolution. His written statement to the Subcommittee, which was supplemented by oral testimony, was (omitting introductory matter) as follows:

The American Bar Association, at its midyear meeting in Chicago, on February 21, 1955, adopted the following resolution:

> "RESOLVED, That the American Bar Association urges the repeal of Title V, entitled 'Fees and Charges,' of the Independent Offices Appropriations Act, 1952, 65 Stat. 268, 290; and
>
> "FURTHER RESOLVED, That in the opinion of the American Bar Association no schedule of agency fees and charges of the character specified in said Title V should be adopted unless first authorized by specific legislation dealing with the particular subject-matter or agency; and
>
> "FURTHER RESOLVED, That the Section of Administrative Law be authorized to take appropriate action in behalf of the Association to make these views effective."

A copy of this resolution was sent to this Committee by letter of March 22, 1955, from Mr. Joseph D. Stecher, Secretary of our Association.

As stated in the above resolution, the American Bar Association urges the repeal of Title V of the Independent Offices Appropriations Act of 1952. The reason for this position was summarized in the report of our Section of Administrative Law to the House of Delegates of the Association as follows:

> "In the considered view of the Section the propriety of agency charges of this character must depend on the particular nature of the agency activity involved, its relation to public and private interests, and other variable factors. Any general program of recovering from those subject to administrative agency procedures 'to the full extent possible, the aggregate cost incurred in the conduct of these activities' is in our view unjustified as a matter of public policy. We are of the opinion, further, that the only proper way of dealing with this matter is for the Congress to prescribe either the fees to be charged in particular matters or the detailed method by which, and the limitations under which, the agency may properly determine the fees to be charged in particular matters."

THE PRESENT LEGISLATIVE SITUATION

I should like to outline the legislative situation on this subject which is somewhat unique.

a. On August 31, 1951, Congress enacted Title V in the Independent Offices Appropriations Act, 1952 (see Appendix A hereto).

b. On November 5, 1953, a Bureau of the Budget Circular A-25 was dispatched to the various agencies instructing them severally to initiate action for the adoption of schedules of fees and charges.

c. Beginning in January and February 1954, notices of proposed rule making including proposed schedule of charges, began to appear in the Federal Register. For example, one of the earliest agencies to respond was the Federal Communications Commission. Its notice was released January 28, 1954.

d. On February 9, 1954, Senator Johnson of Colorado introduced S. 2926 to authorize the Federal Communications Commission to impose nominal fees on certain specified authorizations. (Related Bills were S. 3203 and H.R. 7842.)

e. On March 16-17, 1954, hearings were held on S. 2926 before the Senate Interstate and Foreign Commerce Committee which on March 24th adopted a Committee resolution stating in substance that it was the sense of that Committee "that the Federal Communications Commission should suspend until July 1, 1955 the proceedings involving fees and charges." The Committee observed that this subject presented "basic questions with regard to the fundamental philosophy of regulation."

f. On March 30, 1954, we are advised that the Senate Committee adopted similar resolutions addressed to other agencies which by that time had rule making proceedings outstanding, including, as we recall, the Interstate Commerce Commission, the Civil Aeronautics Board, and others.

Since the Committee resolutions of the previous Congress expire July 1, 1955, it seems appropriate that some action be taken by Congress prior to that date. Our studies indicate that this subject is one on which there exists widespread misunderstanding and misinformation.

The American Bar Association urges that Title V of the 1952 Act be repealed.

Repeal of Title V would allow a "clean slate" approach to the problem. Thereafter, if any program for agency fees and charges is to be adopted, it is the view of the American Bar Association that—

1. The Congressional authorization for fees and charges should be by means of specific legislation, and should deal with the particular subject matter involved.

2. The legislation should either specify the schedule of fees and charges to be imposed or carefully delimit the au-

thority delegated to the agency for their imposition, and enumerate insofar as practical the services under the charge category.

3. The adoption of legislation for such a program should be preceded by Congressional hearings with opportunity for the interested agencies and persons to appear and be heard.

Only by procedures such as above outlined will we achieve adequate understanding and acceptance necessary and advisable to the inauguration of such a far reaching program.

The Delegation Is Too Broad

The delegation of authority contained in Title V of the 1952 Act is too broad and too indefinite to properly canalize agency action. The head of each agency is authorized to prescribe "such fees, charge, or price, *if any,* as he shall determine." The matters subject to this authority are stated to include "any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency * * * to or for any person."

The intent expressed in this legislation is that each agency as to such work or service shall be "self-sustaining to the full extent possible."

It is difficult to imagine a broader delegation of legislative authority. The statute seems to authorize the agency head to determine whether or not any fee will be charged. And, the work or service subject to charge can be interpreted to cover almost everything or almost nothing. It is quite impractical from the terms of the Act to determine what properly may be included or excluded either between agencies or within any one agency. The present statute is not confined to those instances where special benefits accrue to a particular interest as contrasted with those regulatory functions which are inherently governmental.

Senate Report, No. 2120, 81st Congress, Subject: "Fees for Special Services"

The most comprehensive study of this subject with which we are familiar appears in the 1950 report by Senator McClellan's Committee on Expenditures in the Executive Departments. This Committee made a detailed study of the practicability and propriety for establishing fees for agency services. This Committee collected information from twelve departments and agencies. The Committee found that there were three broad categories of services which might be studied with the view of establishing charges.

> "First, there are those which are considered to be for the general good and for which no fees are recommended, except, of course, where the basic statutes have provided for the imposition of fees; second, there is a group of services for which fees are presently charged either pursuant to law or administrative regulation issued under general enabling legislation; and third, there are services which the agencies characterize as services to special in-

terests but for which no fees are now being charged because of lack of authority therefor."

The Senator McClellan Committee then reached two significant conclusions:

> "The study has, however, demonstrated clearly that the field is far too broad to be covered by general legislation; it must instead, if practical results are to be obtained, be covered by individual acts of Congress drafted by specialists in special fields. This report should provide a useful guide to the standing committees of the Congress having such jurisdictional authority.
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> * * * * * *
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> "The committee does not herein aline itself either for or against the assessment of fees. Such a decision can prudently be made only after full and exhaustive hearings. There is no doubt, however, that of the 12 agencies included in this study, some render services the benefits of which accrue wholly to special interests which derive therefrom the means of financial success. The committee does incline to the view that, in such instances, the cost to which the Government is put should be borne by the beneficiaries. Where there is joint benefit to a particular beneficiary and to all of the people, the cost should be equitably divided, and where there is doubt as to the degree of preponderance of benefit, there should be no fee."

The conclusions which we believe are supported by the findings of Senator McClellan's Committee are these:

1. The establishment of agency fees should be approached on a case-by-case basis and preceded by hearings before the appropriate Committee of Congress.
2. No system of fees should be established for services which are fundamentally, inherently and traditionally governmental in character.
3. The establishment of fees and charges, if authorized, should be limited to those services where some private gain accrues to a special interest disassociated from any overriding public benefit.

The McClellan Committee report concluded, as to services which jointly benefit particular interests and the public at large, any doubt should be resolved in favor of no fee.

We would suggest one other consideration which seems inherent in such a program. If agencies are to be put on a self-supporting basis, Congress should evaluate the *net* return of the Government. For example, a substantial amount of such fees would be a deductible expense. Quite an additional overhead would be incurred by Government agencies, some of which have no organization or experience in such matters. There would be substantial additional expenses imposed on persons dealing with Government agencies. Aside from these economic considerations, there is the overriding policy question of transferring the costs of the regulatory agencies upon the persons regulated. This problem may be illustrated by the saying, he who pays the fiddler is going to call the tune. In the field of radio, for example, Congress

has been careful to avoid recognizing any property interest in a station authorization. In the 72nd Congress, the Senate Committee in reporting on H.R. 7716 to amend the Radio Act of 1927 added to this bill specific authority for assessing filing fees which were enumerated in eight pages of that bill, and estimated to yield $700,000. Although favorably reported, this proposal failed.

Hearings on S. 2926, March 1954

The hearings held by the Senate Committee last March on this subject were directed specifically to the Federal Communications Commission and its proposed schedule of charges. Perhaps a few comments on this proposal would serve to illustrate the breadth and variety of this problem. We intend no word of criticism of that agency. On the contrary, the FCC was out in front in attempting to comply with the Budget Bureau circular. It just so happened that the FCC found itself "on target" before the Senate Committee in these hearings. The FCC's notice of proposed rule making, including its schedule of fees and charges, appears at pages 9 to 12 of the Committee hearings. The schedule is subdivided into Broadcast Services, Safety and Special Radio Services and Common Carrier Services.

In arriving at this schedule, the FCC decided that 45% of its total budget was related to "licensing activities." It then decided to be 45% self-sufficient. All licensing activities were put on a charge basis, differing only as to amount, and without regard to the distinction between special interests and other categories of obvious public character. In the field of radio, and excluding wire services, the FCC charges would fall upon 46,000 marine stations, 40,000 aviation stations, 21,000 industrial stations, 15,000 public service stations, 14,000 land transportation stations, 123,000 amateur stations, 1,600 common carrier stations, 600 experimental radio stations, 6,000 radio broadcast stations and 962,000 radio operators. The only concession made to differences between these groups was the amount of the charge. For example:

a. The fee for an AM station was made the same as an FM station. During fiscal year 1954, the number of FM stations on the air was reduced by 32.

b. The same charge was levied for television stations both UHF and VHF. Congress is currently trying to find ways and means of assisting the UHF stations, e.g., minimizing excise taxes.

c. The most numerous class of radio stations is in the Safety Service. This includes marine, aviation, police, fire, forestry conservation, highway maintenance, special emergency and state guard. The public categories of stations are licensed to states, counties, cities and a variety of service organizations. The Commission placed its licensing activities for these categories of stations on a charge basis.

d. In several situations, the Government will find itself on the paying and receiving end of agency charges. For example, where the cost of the author-

ization is chargeable to a Government contract or where the authorization is used in an activity under Federal subsidy.

e. An examination of the FCC licensing activities would reveal a substantial number of filings which are really unnecessary and a substantial number which are for the benefit of the agency and not the person regulated.

The few examples above may serve to illustrate the advisability of more detailed legislative treatment of this subject before sanctioning any Government-wide imposition of fees on millions of persons and business activities of this nation.

Conclusion

For the above outlined reasons, the American Bar Association earnestly urges repeal of Title V of the 1952 Act.

If this cannot be done by some appropriate legislative procedure prior to July 1, 1955, we strongly suggest that the existing postponement be continued in effect, at least to the adjournment of this Congress.

COMMITTEE ON PUBLIC CONTRACTS—REPORT OPPOSING REPEAL OF THE FULBRIGHT AMENDMENT TO THE WALSH-HEALEY ACT

The Committee on Public Contracts submitted to the meeting of the Council on May 21, 1955, a report, concurred in by the Committee on Labor, opposing the enactment of S. 211 and H.R. 156, 84th Congress, which would repeal the Fulbright Amendment to the Walsh-Healey Act and thus in effect create a new general exemption from the application of the Administrative Procedure Act.

Action in this field being within the general authority conferred by the House of Delegates on the Section in 1950 "to preserve the gains made by the adoption of the Administrative Procedure Act," the Council, approving the proposed report, voted to submit to the Committees on the Judiciary of the Senate and House a report in like terms in behalf of the Association.

The report of the Committee on Public Contracts is as follows:

The Committee on Public Contracts has considered the provisions of the companion bills, H.R. 156, introduced in the House on January 5, 1955, and referred to the House Committee on the Judiciary, and S. 211, introduced in the Senate on January 10, 1955, and referred to the Senate Committee on the Judiciary.

The Committee recommends, for the reasons hereinafter set forth, that the Section of Administrative Law oppose the enactment of S. 211 and H.R. 156 on behalf of the American Bar Association under the general authority conferred on the Section by Resolution of the Board of Governors adopted February 27, 1950, 75 A.B.A. Rep. 443, 446-7 (1950) and ratified by the House of Delegates.

These two bills would repeal the provisions of Section 10 of the Walsh-Healey Act, approved June 30, 1936, as amended by

the Act of June 30, 1952, 66 Stat. 308, ch. 530, P.L. 429, 82nd Congress, 2nd Session, 41 U.S.C.A. 43a. The amendatory legislation enacted a new Section 10, making the administration of the Walsh-Healey Act subject to the Administrative Procedure Act, redesignated former Section 10, which was the separability clause, as Section 11, and redesignated Section 11 as Section 12. S. 211 and H.R. 156 make no specific reference to the 1952 Amendment, make only a general reference to Section 10 of the Walsh-Healey Act, as amended, and are, therefore, misleading; so misleading, in fact, that the publishers of an Index-Digest of Congressional Bills describe the bills as repealing the separability clause. Similar legislation was introduced in the last Congress and was similarly misleading. Several Government agencies reported then to the respective Judiciary Committees that they had no objection to a repeal of the separability provisions of the Walsh-Healey Act.

The 1952 Amendment to Section 10 of the Walsh-Healey Act (41 U.S.C.A. 43a) contains three subsections, as follows: (1) Subsection (a), which makes the administration of Sections 1-5, inclusive, and Sections 7-9, inclusive (41 U.S.C.A. 35-39, incl., and 41 U.S.C.A. 41-43, incl.) of the Walsh-Healey Act subject to the Administrative Procedure Act; (2) Subsection (b), which requires that all prevailing wage determinations under Section 1(b) (41 U.S.C.A. 35(b)) shall be made on the record after hearing and makes such determinations subject to judicial review under Section 10 of the Administrative Procedure Act, within 90 days after such determination is made; and (3) Subsection (c), which states that notwithstanding the inclusion of any of the stipulations required by any provision of the Act in any contract subject to the Act, *any* interested person shall have the right of judicial review of any legal question which might otherwise be raised, including but not limited to wage determinations and the interpretation of the terms "locality", "regular dealer", "manufacturer" and "open market."

The purpose of the Walsh-Healey Act as originally enacted was to require persons having supply contracts of more than $10,000.00 with the Government to conform to certain labor conditions in the performance of the contracts and thus to eliminate the practice under which the Government was compelled to deal with sweat shops. (*House Report No. 2946, 74th Congress, 2nd Session.*) In effect the Act extends to workers engaged in the performance of Government supply contracts the same kind of protection theretofore afforded by the Eight-Hour Law of 1912 and the Davis-Bacon Act in the case of laborers and mechanics engaged on Government construction contracts.

Section 1 of the Act (41 U.S.C.A. 35) provides that all supply contracts in any amount exceeding $10,000.00 shall contain the following stipulations and representations: (1) that the contractor is the manufacturer or regular dealer in the contract item; (2) that the contractor will pay its employees not less than the minimum wages determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of indus-

tries currently operating in the locality in which the contract items are to be manufactured or furnished; (3) that no employee will be permitted to work more than eight hours per day or forty hours per week unless the contractor has agreed with the employees to pay overtime under the Fair Labor Standards Act; (4) that the contractor will not employ males under sixteen or females under eighteen years of age and that no convict labor will be used; and (5) that no part of the work will be performed under conditions which are unsanitary or hazardous or dangerous to the health and safety of employees.

Section 2 (41 U.S.C.A. 36) of the Act provides that breach by the contractor of any of the stipulations or representations shall give the contracting agency the right to cancel the contract and repurchase from others, charging any additional costs to the original contractor. In addition thereto, the breach renders the contractor liable to the Government for the amount of any underpayment to its employees and for liquidated damages of $10.00 per day for each child worker or convict laborer knowingly employed on the contract. Sums withheld or recovered by the Government for underpayment of wages are paid to the employees if they make claim therefor within one year after notice to the contractor of such withholding or recovery.

Section 3 (41 U.S.C.A. 37) directs the Comptroller General to distribute a list of contractors found by the Secretary of Labor to have breached the required stipulations and representations. Contracting officers are enjoined from awarding contracts to such contractors for three years thereafter.

Section 4 (41 U.S.C.A. 38) of the Act delegates to the Secretary of Labor the administration thereof, and authorizes him or his duly authorized representative to make investigations and findings, to prosecute any inquiry necessary to the exercise of his functions under the Act in any part of the United States, and to make rules and regulations. The regulations and interpretations issued by the Secretary of Labor are compiled in documents entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations, No. ....." These regulations set forth in detail the coverage of the Act as well as exemptions and procedures thereunder.

Section 5 (41 U.S.C.A. 39) of the Act authorizes the Secretary of Labor, or his representative, on his own motion or on application of any person affected by any ruling of any agency of the Government in relation to a proposal or contract involving the provisions of the Act, and on complaint of breach or violation thereof, to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath, and to enforce such orders. The Secretary, or his representative, may make findings of fact, after notice and hearing, which, if supported by the preponderance of the evidence, are conclusive on any court of the United States. Such decisions as are deemed necessary to enforce the provisions of the Act, based upon such findings, may also be made.

Section 6 (41 U.S.C.A. 40) authorizes the Secretary of Labor to allow reasonable variations, tolerances and exemptions to and from any or all provisions respecting minimum wages and maximum hours or the extent of the application of the Act to contractors upon a written finding by the head of a contracting agency that inclusion of the stipulations or representations with respect thereto will seriously impair the conduct of Government business. Similarly, upon the joint recommendation of a contracting agency and a contractor he may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor if he finds that to do so is necessary and proper in the public interest or to prevent injustice and undue hardship.

Section 7 (41 U.S.C.A. 41) defines "person", and Section 8 (41 U.S.C.A. 42) prescribes the effect of the Act on other laws.

Section 9 (41 U.S.C.A. 43) makes the provisions of the Act inapplicable to perishables including dairy, livestock and nursery products, to agricultural or farm products purchased from the original producers, to contracts of the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof, to carriage of freight or passengers where published tariffs are in effect, and to open market purchases.

Section 10 (41 U.S.C.A. 43a), which was added by the 1952 Amendment, *supra,* has been discussed previously.

Section 11 (41 U.S.C.A. 44), which was Section 10 prior to the 1952 Amendment, is the "separability" provision of the Act, and Section 12 (41 U.S.C.A. 45), which was Section 11 prior to the 1952 Amendment, makes the provisions of the Act applicable to all contracts entered into pursuant to invitations for bids issued on or after 90 days from June 30, 1936, but excepts from the minimum wage stipulations of the Act contracts relating to such industries as to which no determinations have been made. This section has been interpreted to mean that minimum wage determinations do not apply retroactively to bids invited or to contracts awarded prior to their effective date. *Part IV, Section 41(a)(5) Walsh-Healey Public Contracts Act, Rulings and Interpretations, No. 3.* By the provisions of various other statutes such as the Armed Services Procurement Act of 1947, the provisions of the Act have been extended to negotiated contracts.

A careful study of these provisions discloses the important effect which the Act has upon Government contracting. Its provisions are not merely permissive, they are mandatory. The determination of prevailing wage rates may affect the competitive position of Government contractors and can have an effect upon labor relations. The recent protracted hearings before the Secretary in the matter of determination of prevailing wage rates in the coal industry, which was participated in by both the industry and labor, is indicative. Findings of violations of the Act by the Secretary with the resulting penalties prescribed by the Act indicate the appropriateness of provisions for judicial review. The purpose of the 1952 Amend-

ment was "to assure that persons adversely affected or aggrieved by administrative action shall have proper procedural and judicial safeguards." See *Senate Report No. 1599, May 27, 1952, to accompany S. 2594.* The conference report (*Conference Report No. 2352, June 28, 1952*) which resulted in the adoption by both Houses of the Amendment in its final form, emphasizes the fact that the Amendment makes administrative rules promulgated under the Walsh-Healey Act "subject to certain minimum procedural requirements applicable to agencies generally in exercising rule making powers." This same conference report, in referring to Section 10(b) (41 U.S.C.A. 43a(b)) as amended, states: "The full force of the procedural safeguards contained in the Administrative Procedure Act is thereby brought into play insofar as these controversial determinations are concerned." As to Section 10(c) (41 U.S.C.A. 43a(c)), the conference report states: "Without the language contained in subsection (c) there would be some doubt as to whether any Government contractor who had signed a contract containing 'Walsh-Healey stipulations' could later in any legal proceeding raise questions concerning (1) the applicability of the act to his particular contract, or (2) the legality of any such stipulation."

The enactment of the 1952 Amendment conferred rights upon labor and industry which had not theretofore existed. See *Lukens Steel Co.* v. *Perkins,* 310 U. S. 113. In the initial stages of testing the new legislation, actions for judicial review of prevailing wage determinations have indefinitely postponed the effectiveness of some of the prevailing wage determinations made since the adoption of the Amendment. Particularly in the textile industry, the problem appears to have become acute. The difference in wage rates between New England and Southern textile manufacturers has provided a competitive advantage to the South which the New England manufacturers oppose. A prevailing wage determination made by the Secretary some two years ago which established prevailing wage rates for the industry has been challenged in the United States District Court for the District of Columbia. See *Covington Mills* v. *Mitchell* and *Alabama Mills* v. *Mitchell, infra.* The challenge in these cases is based primarily on the fact that the determination was made without reference to the prevailing wage rate in the localities involved. Temporary injunctions have postponed effectiveness of these rates. By the time the action has run the gamut of judicial review, the determination may well be obsolete. The circumstances which impelled the introduction of the two bills here in question by Senator Smith and Congressman Nelson of Maine thus become apparent.

The Secretary of Labor, the Committee is informally advised, does not oppose the requirement that wage determinations be made on the record nor that they be subject to judicial review. He states, however, that the judicial review provided by the Amendment makes effective administration of the minimum wage provisions of the Act virtually impossible. He apparently bases this statement on the textile industry wage determination now tied up in the courts

and on the broad scope of review permitted by the Amendment. He points out that in the litigation now pending in the United States District Court for the District of Columbia (*Covington Mills* v. *Mitchell,* Civil No. 258-53; *Alabama Mills* v. *Mitchell,* Civil No. 614-53) the Court interpreted the Amendment as extending the right of judicial review to any employer in the industry, even though he has no Government contract, has made no bid upon one, or has never received one. He also points to the provisions of Section 10(c) and suggests that under that Section, even though no judicial review is sought under 10(b), the question of the legal propriety of a wage determination is not laid at rest but may be raised at any time in the future whenever an action is brought by the Government to enforce the wage determination, thus leaving such determinations always unsettled. He suggests, therefore, that the judicial review provisions with respect to wage determinations made under the Walsh-Healey Act should be modified along the lines of the judicial review provided in Section 10 of the Fair Labor Standards Act. That Section provides for judicial review by a Court of Appeals.

The enactment of the 1952 Amendment, which is commonly called the Fulbright Amendment, was consistent with the position of the American Bar Association in the field of administrative procedure and judicial review of administrative action. It tends to preserve and augment the gains made by the adoption of the Administrative Procedure Act and to develop additional measures of like purpose. It may be that Section 10 of the Walsh-Healey Act (41 U.S.C.A. 43a) in its present form unduly prolongs and delays judicial review and thus unnecessarily delays the final determination of prevailing wage rates to be applicable to the performance of Government contracts. Many regulatory statutes provide for judicial review of agency action by requiring the complaining party to file with a Court of Appeals a written petition praying that agency action be modified or set aside. Thereafter, the agency files with the reviewing court a transcript of the record, and the review is based upon that record. Such statutory procedures are, nevertheless, consistent with and are provided for in Section 10(b) of the Administrative Procedure Act. It is only because of the absence of such a provision that an action to review a wage determination of the Secretary under the Walsh-Healey Act must be commenced in the District Court for either a declaratory judgment or an injunction, with the possibility thereafter of further delay on appeal and on petition to the Supreme Court for a writ of certiorari. Taking evidence in the District Court, where necessary, may also add to the delay. But this situation is hardly justification for more than further amendment to the Walsh-Healey Act. It provides no justification, in your Committee's view, for outright repeal of the amended Section 10 (41 U.S.C.A. 43a) of the Walsh-Healey Act.

Respectfully submitted,

COMMITTEE ON PUBLIC CONTRACTS

ROBERT S. MOSS
Chairman

HOOVER COMMISSION REPORT

(A Note by the Editor of the Bulletin)

The long-awaited Report of the Hoover Commission and that of its Task Force on Legal Services and Procedure were submitted to the Congress at the end of March. Both are documents of great significance for administrative law and, as such, should be of wide interest to the members of this Section. This is particularly true of the Report of the Task Force, which contains the most comprehensive treatment of federal administrative law since the issuance of the celebrated Report of the Attorney General's Committee on Administrative Procedure in 1941. Whether it will have the same effect in practice as the earlier Report (which led directly to the Administrative Procedure Act) remains, of course, to be seen. But it certainly seems likely to serve as the catalyst in a new movement for administrative-law reform.

The Task Force Report is devoted to three principal subjects: (1) legal services, (2) legal procedure, and (3) legal representation. It is the latter two that are of primary interest to the administrative lawyer. In the field of legal procedure especially, the Task Force study is both extensive in scope and far-reaching in its recommendations. Among the unanimous recommendations of the Task Force, the following are of particular interest:

1. An Administrative Court of the United States should be established to consist of two sections having jurisdiction, respectively, in the fields of trade regulation and taxation. The Trade Section would exercise the jurisdiction now vested in the Federal Trade Commission and that of eight other federal agencies, including the Interstate Commerce Commission, vested with limited authority over trade practices in their fields of special competence.

2. Examiners under the Administrative Procedure Act should be replaced by hearing commissioners appointed by a Chief Hearing Commissioner, himself appointed by the President by and with the advice and consent of the Senate, who should be attached to the proposed Administrative Court. The tenure, status, compensation, and removal of such commissioners should be fixed by law.

3. Judicial functions such as the imposition and compromise of money penalties, the award of reparations or damages, and the issuance of injunctive orders, should be transferred to the courts wherever possible.

4. An Office of Legal Services and Procedure should be set up in the Department of Justice to assist agencies in simplifying, clarifying, and making uniform rules of substance and procedure; to insure agency compliance with public-information requirements; and to receive and investigate complaints regarding legal procedures.

5. The Administrative Procedure Act should be substantially amended and improved. Specific amendments suggested include:

A. Repeal of all general exemptions from the APA;

B. Broadening of the publication requirements of section 3 of the APA;

C. Strengthening of the rule-making procedures provided by section 4, by eliminating exemptions therefrom and providing greater opportunity for public participation in rule-making;

D. In cases where the Constitution or a statute does not require an agency hearing, notice of a proposed decision should be given, and opportunity for intra-agency review should be provided;

E. Judicial review of jurisdictional questions should be permitted in subpena enforcement cases;

F. Internal separation of functions should be extended to all formal adjudicatory proceedings, including the process of final decision by agency heads;

G. The powers of hearing officers in formal cases should be greatly strengthened, both at the hearing and in the decision process. Such officers should prepare initial decisions in all such cases and agency review of such decisions should be limited;

H. Formal agency hearings should be governed, to the extent practicable, by the rules of evidence applicable in civil nonjury cases in the federal district courts;

I. The exceptions to judicial review at the beginning of section 10 of the APA should be repealed;

J. A simplified, uniform system of review by petition should be provided for;

K. Agency findings of fact should be set aside on review if "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record";

L. There should be full review of agency applications of law to fact;

M. No sanction should be imposed or rule or order issued against any person for pursuing a normal, customary, or previously acceptable course of conduct, unless such conduct shall have been proscribed or restricted by agency rule;

N. No sanction should be imposed or rule or order issued for any act done or omitted in good faith reliance upon any rule or written advisory statement, issued by a duly authorized officer of an agency;

O. Courts of competent jurisdiction should be empowered to enjoin, at any stage of an agency proceeding, agency action in excess of constitutional or statutory authority.

In addition to these unanimous recommendations, there were two important recommendations which provoked divisions within the Task Force. The recommendations in question suggested the establishment of two additional sections of the Administrative Court proposed by the Task Force. The first of these recommended that an Immigration Section of the Court be established to provide judicial determination in cases involving exclusion, deportation, fines, and bail. Nine members of the Task Force joined in this recommendation; three opposed it; and two neither favored nor opposed it. The second recommenda-

tion urged the establishment of a Labor Section in the Administrative Court, to have jurisdiction over the cases involving unfair labor practices presently decided by the NLRB. Twelve members of the Task Force approved the recommendation; one opposed it; and one neither favored nor opposed it.

The Report of the Task Force, as is the case with the reports of such units set up by the Hoover Commission, is a study made for the Commission's own use and the recommendations contained in it are, more or less, in the nature of advice to the Commission. In its Report to the Congress, the Commission itself adopted in substance all of the Task Force's recommendations which did not deal directly with proposed amendments to the Adminisrative Procedure Act. Thus, the Commission urged that:

1. An Administrative Court should be established (though, under the Commission's recommendation, it would be composed of a Tax Section, a Trade Section, and a Labor Section).

2. The examiner problem be resolved exactly as recommended by the Task Force, i.e., by providing for appointment of hearing commissioners by a Chief Hearing Commissioner attached to the Administrative Court, which would have administrative control and direction over them.

3. An Office of Legal Services and Procedure should be set up in the Department of Justice along the lines suggested by the Task Force.

4. Congress should look into the feasibility of transferring to the courts certain judicial functions of agencies, such as the imposition or remission of money penalties, the award of reparations, and the issuance of injunctive orders.

As far as those recommendations of the Task Force are concerned that involve proposed amendments to the Administrative Procedure Act (which have already been summarized), only three Commissioners approved them unreservedly. One Commissioner reserved the right to disagree with them in his capacity as a member of the Congress. One Commissioner, Representative Holifield, dissented from the Commission's Report as too "legalistic." Six members of the Commission, including the Chairman and the Attorney General, did not vote for these recommendations because of their possible consequences and possible increases in the expenditures of the Government. However, they felt that in view of the searching investigation and the eminence of the members of the Task Force who proposed the recommendations in question, these should be furnished to the Congress but without Commission action upon them. A basically similar approach was taken by Commissioner Farley, who states that he voted in favor of the recommendations, with reservations, so that by Commission action these would be transmitted to the Congress for its consideration. It will thus ultimately be up to the Congress itself to determine whether and to what extent the recommendations of the Task Force will be given legislative force.

There appears to be little doubt but that attention in the field of federal administra-

tive law will be focussed in the immediate future upon the Report of the Hoover Commission and its Task Force. As such, it is certain that the agenda of most of the committees of this Section will be dominated by those Reports, and especially by the specific recommendations contained in them. In this connection, of particular interest is the submission in statutory form of its recommendations by the Task Force, which incorporated them in the form of a proposed bill at the end of its Report. This proposed bill is called the *Administrative Code* and is intended to take the place of the Administrative Procedure Act. The difference in title is significant, for the proposed law is far more comprehensive and far-reaching than the present Act.

The Administrative Code, as it is proposed by the Hoover Commission Task Force, is reprinted in the following pages. It is felt that the distribution to the members of the Section of the exact text of the Task Force's legislative proposals will serve a most worthwhile purpose, since it is upon them that most of the Section's work will now be centered. In addition to the text of the proposed Code, there is printed as an introduction the statement by the Task Force of its purpose and, in columns parallel to the text, the Task Force's sectional analysis of the Code. Omitted from the text herein printed are those portions of the proposed Code which list specific laws repealed or amended, including laws containing exemptions from the present Administrative Procedure Act and transfers of jurisdiction from agencies to the proposed Administrative Court and other courts (Sections 2 to 6 of the Code, pages 389-96 of the Task Force Report).

Members of the Section who are interested can, it should be noted, obtain individual copies of the Commission and Task Force Reports from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. The exact titles of the Reports and their prices are:

1. Commission on Organization of the Executive Branch of the Government, Legal Services and Procedure—45 cents.

2. Commission on Organization of the Executive Branch of the Government Task Force Report on Legal Services and Procedure—$1.25.

BERNARD SCHWARTZ
Editor

EXCERPTS FROM THE REPORT OF THE HOOVER COMMISSION TASK FORCE

Statement of Purpose of Administrative Code, Text of Code, and Sectional Analysis

Purpose of Administrative Code

In 1946 the Congress enacted the Administrative Procedure Act for the purpose of providing a charter of due process of law for the several agencies and departments of the executive branch. The task force now proposes that the Administrative Procedure Act be amended and supplemented in substantial respects and reenacted as the Administrative Code.

Time and experience have shown the need for changes in, and expansion of, the provisions of the Administrative Procedure Act. These changes are required to preserve and strengthen the separation of powers within the Federal Government as well as to improve procedures within the departments and agencies of the executive branch of the Government. The Administrative Code thus goes considerably beyond the 1946 statute. This comprehensive legislation is premised on the importance which every phase of administrative law—from an agency investigation to judicial review of agency action—has on the life of the citizen. Its enactment will constitute congressional recognition that the statutes affecting the administrative process should now be codified in the same way that the internal revenue laws and the criminal laws have been codified.

Codification lends itself to the concept of the task force that Federal administrative law is not static. More than any other modern field of law it is constantly changing in response to the needs of mid-20th century political life.

The division of the Administrative Code into titles is designed to facilitate the addition of new sections which the Congress may, from time to time, consider to be necessary in the public interest.

Title I—Definitions

Title I of the Administrative Code redefines the terms of frequent application in all parts of the Code. These definitions substantially follow those of section 2 of the Administrative Procedure Act, and apply except where the context of a Code section clearly indicates otherwise.

Title II—Procedure

Title II of the Administrative Code includes the statutory requirements governing all agencies and departments with respect to public information, rule making, adjudication, licensing, miscellaneous procedural matters, hearings, decisions, judicial review, limitations of authority, and directives of the Office of Legal Services and Procedure in the Department of Justice. This title is a modification of sections 3 to 10 of the Administrative Procedure Act of 1946. The purpose of reenacting these provisions in the form set forth in title II is to eliminate deficiencies which have become apparent during the first 8 years' experience with the Administrative Procedure Act, and to supplement the basic requirements of that act.

Some of the important new provisions relate to the requirement that hearing commissioners in every case render initial decisions which will become the decision of the agency unless modified upon review; the modification of the substantial evidence rule upon judicial review of administrative decisions and the according of the same type of review by agencies of the decisions of their hearing commissioners in cases of adjudication and formal rule making, except for matters of policy delegated to the agency by the Congress; and the imposition of certain limitations upon the authority of agencies, including such matters as good faith reliance and effective restrictions upon proceedings in excess of jurisdiction. One of the new features of the Code is that an Office of Legal Services and Procedure in the Department of Justice should have real authority over all agencies and departments with respect to the drafting of rules and also to the public information requirements of the Administrative Code.

Title III—Office of Legal Services and Procedure

Title III of the Administrative Code provides for an Office of Legal Services and Procedure in the Department of Justice to be headed by a presidentially appointed Director. This Office would have broad powers to achieve the clarification, simplification, and uniformity of agency rules of substance and procedure, and the compliance with the public information requirements of the Administrative Code.

Title IV—Administrative Court of the United States

Title IV of the Administrative Code proposes a new court of record for the United States, to be known as the Administrative Court of the United States and to consist of two sections—a Trade Section and a Tax Section. Subject to the Administrative Office of the United States Courts, this Court will serve primarily as the judicial tribunal of special jurisdiction to which cases now heard at the administrative level will be transferred for decision at the judicial level.

Title V—Hearing Commissioners

Title V of the Administrative Code proposes a new method for the appointment of hearing commissioners to handle all quasi-judicial functions for administrative agencies. There is to be a Chief Hearing Commissioner assigned to the Administrative Court. With the assistance of an Advisory Committee, the Chief Hearing Commissioner is to appoint a sufficient number of hearing commissioners in two grades (senior hearing commissioners and hearing commissioners) to handle all agency hearings required under the Constitution or by statute. The hearing commissioners are to be subject to assignment and recall as the interest of the executive branch requires, but they will be assigned in semipermanent status to various agencies in order that advantage can be taken of the special skills required in conducting certain types of hearings.

Title VI—Appearance and Representation

Title VI of the Administrative Code assembles provisions designed to protect private rights to counsel or other representation and to insure that this representation will be in the public interest. Heretofore this subject was regulated in part by section 6 (a) of the Administrative Procedure Act.

Title VI is designed to meet the need for an Administrative Practitioners' Act, which has been frequently proposed since 1946. Thus, general standards of conduct and a conflict of interests' rule are proposed for attorney and nonlawyer representatives alike. The right to representation in all administrative proceedings, formal or informal, has been specifically enacted into statute.

Representation by attorneys would hereafter take place after the filing of a mere statement of the attorney's being in good standing as a member of a bar, without the special requirements of examination and investigation now imposed by several agencies. Discipline of attorneys, both private and Government, in administrative practice is assured through the Federal Grievance Committee with power to initiate disciplinary proceedings in Federal courts.

Representation by persons other than attorneys is provided for under certain stated conditions required in the public interest. Agencies are given the requisite authority to discipline such representatives, who are, of course, prohibited from engaging in the practice of law.

Title VII—General Provisions

Title VII of the Administrative Code contains provisions relating to the manner in which the Code shall be construed, applies certain criminal statutes to action taken by persons pursuant to the Code, contains a separability clause, and provides for an effective date 6 months after the enactment of the Code.

Administrative Code

A BILL

To improve legal procedures in the Executive Branch of the Government through the enactment of an Administrative Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the Administrative Procedure Act is amended to read as follows:

"SHORT TITLE

"SECTION 1. Titles I to VII, inclusive, of this Act, divided into titles and sections according to the following table of contents, may be cited as the 'Administrative Code'.

[Table of Contents omitted]

"TITLE I—DEFINITIONS

"SEC. 100. As used in this Code, except where the context clearly indicates otherwise—

"(a) AGENCY.—'Agency' means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the Possessions, Territories, Commonwealths, or the District of Columbia. Except as to the requirements of section 200 of this Code, functions exercised by courts-martial and military commissions and by military or naval authority exercised in the field in time of war or in occupied territory shall be excluded from the operation of this Code. Except as to the requirements of sections 200 and 201 of this Code, arbitration and mediation functions shall be excluded from the operation of this Code. No agency or function shall be exempt from this Code, or any provision hereof, except by specific statutory reference to the Administrative Code.

"(b) PERSON AND PARTY.—'Person' includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. 'Party' includes any person or agency named or admitted as a party, or properly seeking and entitled as of right

Sectional Analysis of Administrative Code

Title I—Definitions

These definitions follow, in the main, the present statutory pattern as set forth in section 2 of the Administrative Procedure Act, 5 U. S. C. § 1001 (1952). They are made a separate title in the Administrative Code in order to secure a uniformity of terms in the several titles of the Code. Important changes have been made in the definition of "agency" to eliminate certain exemptions which are no longer necessary. Other changes are designed only to eliminate possible controversies over interpretation. The purpose of the definitions has not been changed.

Section 100 (a)—Agency.—This reenacts the definition of "agency" contained in section 2 (a) of the Administrative Procedure Act as each authority of the Government except Congress, the courts, or the governments of possessions, Territories, any Commonwealth, or of the District of Columbia. Several exceptions presently contained in the statute have been eliminated to increase uniformity in administrative procedures to the fullest extent practicable consistent with effective and efficient performance of administrative functions.

The new section recognizes two categories of exceptions. In the first, required only to conform to the public information requirements of section 200, are functions exercised by courts-martial and military commissions and by military or naval authority in the field in time of war or in occupied territory. This represents no change from the present act.

Secondly, the former exemption of "agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them" has been redefined as "arbitration and mediation functions." This more closely reflects the original intent of Congress in granting the exception. Where the 1946 statute merely required conformity with public information requirements, the statutory proposal here also requires that the public rule making procedures of section 201 be utilized in the exercise of arbitration and mediation functions.

to be admitted as a party, in any court or agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party to an agency proceeding for limited purposes.

"(c) AGENCY RULE AND RULE MAKING.—'Rule' means the whole or any part of an agency statement of general or particular applicability and future effect designed to implement or interpret law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor, or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. 'Rule making' means agency process for the formulation, amendment, or repeal of a rule.

"(d) AGENCY ORDER AND ADJUDICATION.—'Order' means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making, but including licensing, or any request for agency relief. 'Adjudication' means agency process for the formulation of an order.

"(e) AGENCY LICENSE AND LICENSING.—'License' includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission. 'Licensing' includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, or modification of a license, and the prescription or requirement of terms, conditions, or standards of conduct thereunder.

"(f) AGENCY SANCTION AND RELIEF.—'Sanction' includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person, (2) withholding of relief, (3) imposition of any form of penalty or fine, (4) destruction, taking, seizure, or withholding of property, (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees, (6) requirement, revocation, or suspension of a license, or the prescription or requirement of terms, conditions, or standards of conduct thereunder, or (7) taking of other compulsory or restrictive ac-

This section does not continue the former exemption of functions exercised under emergency wartime statutes, the Contract Settlement Act, and the Surplus Property Act. These are made subject to provisions of the code. The former exemption of functions conferred by the Universal Military Training and Service Act has been eliminated, except in the case of the formal hearing requirements of section 205, which now contains the limited statutory exemption. Other specific exemptions from the Administrative Procedure Act are changed in section 2 of the provisions proposed by the task force to further amend or repeal other statutes besides the Administrative Procedure Act. Such exemptions from the Code, which do not expressly supersede or modify its provisions, would be prohibited under section 100 (a), as they now are under the fifth sentence of section 12 of the 1946 act, 5 U. S. C. § 1011 (1952).

Section 100 (b)—Person and Party.—This section reenacts the definitions of "person" and "party" contained in section 2 (b) of the Administrative Procedure Act.

Section 100 (c)—Rule and Rule Making.—This section reenacts the definitions of agency "rule" and "rule making" contained in section 2 (c) of the Administrative Procedure Act.

Section 100 (d)—Order and Adjudication.—This section substantially reenacts the definitions of agency "order" and "adjudication" contained in section 2 (d) of the Administrative Procedure Act. The definition of an agency order has been strengthened to include the disposition of any request for agency relief, as defined in section 100 (f) of the Code, presently section 2 (f) of the Administrative Procedure Act.

In reenacting the definition of adjudication, the Code is not intended to give legislative sanction to any exclusion therefrom of so-called proprietary functions. That adjudication includes the exercise of "proprietary" functions and of all others outside the scope of rule making must be reemphasized and made clear. This the task force has done in redrafting section 5 of the Administrative Procedure Act, 5 U. S. C., § 1004 (1952), as section 202 of this code.

Section 100 (e)—License and Licensing.—The definitions of agency "license" and "licensing" under section 2 (e) of the Administrative Proce-

tion. 'Relief' includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy, (2) recognition of any claim, immunity, privilege, exemption, or exception, or (3) taking of any other action upon the application or petition of, and beneficial to, any person.

"(g) AGENCY PROCEEDING AND ACTION.—'Proceeding' means any agency process for any rule or rule making, order or adjudication, or license or licensing. 'Action' includes the whole or part of every agency rule, order, license, sanction, or relief, the denial thereof, or failure to act thereon; or the equivalent thereof in any form.

"TITLE II—PROCEDURE

"PUBLIC INFORMATION

"SEC. 200. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest, or (2) any matter relating solely to the internal management of any agency—

dure Act remain the same in this section of the Code, except that the coverage of "licensing" has been strengthened and extended to procedures implicit in the definition but not always so recognized by the agencies. Under this expanded definition, the term includes the prescription or requirement of terms, conditions, or standards of conduct imposed under any license in any form whatsoever.

Section 100 (f)—Sanction and Relief.—The definitions of agency "sanction" and "relief" are the same as under section 2 (f) of the Administrative Procedure Act.

Section 100 (g)—Proceeding and Action.—The definitions of agency "proceeding" and "action" remain substantially the same as under section 2 (g) of the Administrative Procedure Act. "Proceeding" is defined specifically as any agency process for any rule or rule making, order or adjudication, or license or licensing. The concept of agency "action" has been made more explicit. As defined in the Code, the term includes the whole or part of every agency rule, order, license, sanction, or relief; the denial thereof or failure to act thereon; or the equivalent thereof in any form. The last phrase is intended to comprehend every form of agency action which substantively affects private or public rights or a determination thereof.

Title II—Procedure

Section 200—Public Information

Information which is required to be disclosed to the public by the executive branch in the interests of due process and fair government has been expanded by the task force in this section over the provisions contained in section 3 of the Administrative Procedure Act, 5 U. S. C. § 1002 (1952). The underlying policy of the task force recommendation is that whatever can be disclosed to the general public without harm to the national security of the United States or without interfering with the lawful scope of internal agency management should be a matter of public information.

The introductory clause of section 200 of the Code reenacts the introductory clause of section 3 of the 1946 act. The requirements of that section apply except to the extent that there is in-

"(a) RULES.—Every agency shall separately state and currently publish in the Federal Register and in the daily issues thereof (1) descriptions of its central and field organization, including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests, (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available, (3) all instructions, and a general description of all forms, for all applications, registrations, reports, contracts, examinations, or other required papers or statements used by the agency in the discharge of any of its functions, operations, or activities, as well as a statement as to where such forms or instructions may be obtained, and (4) substantive rules and statements of policy or interpretations formulated, adopted, or used by the agency other than rules addressed only to and served upon named persons, as well as all other statements relied upon by the agency as authority for, or invoked or used in the discharge of, any of its functions, operations, or activities. The Director of the Office of Legal Services and Procedure established pursuant to Title III of this Code may permit or direct any agency to use a short form or alternative method of public information where (1) notice thereof is published in the Federal Register and in the daily issues thereof, and (2) the Director certifies in writing that the short form or alternative method used is adequate to inform the public. No such description, statement, rule, notice, instruction, or other regulation which is not so published shall be valid or effective against any person or party.

volved (1) any function of the United States requiring secrecy in the public interest, or (2) any matter relating solely to the internal management of any agency.

Section 200 (a)—Rules.—This subsection remains essentially the same as in the present legislation, so far as its operation and effect are concerned. Two categories of subject matter now listed in section 3 (a) of the Administrative Procedure Act have, however, been amplified. Further, authority is given to the Office of Legal Services and Procedure in the Department of Justice to permit or direct alternative or shortened methods of public information in the interests of economy.

The reference in section 3 (a) (3) of the Administrative Procedure Act to "forms and instructions" issued by agencies has been expanded to cover all instructions, and a general description of all forms, for all applications, registrations, reports, contracts, examinations, or other required papers or statements used by the agency in the discharge of any of its functions, operations, or activities, as well as a statement as to where such forms or instructions may be obtained.

Section 3 (a) (3) of the Administrative Procedure Act presently covers substantive rules, statements of general policy, and interpretations. This section has been extended under section 200 (a) of the Code to cover substantive rules and statements of policy or interpretations formulated, adopted, or used by the agency, other than rules addressed only to and served upon named persons, as well as all other statements relied upon by the agency as authority for, or invoked or used in the discharge of, any of its functions, operations, or activities.

The most important revision of section 200 (a), as compared with section 3 (a) of the Administrative Procedure Act, concerns duties of the Director of the Office of Legal Services and Procedure in the Department of Justice. Under the task force recommendation, the Director may permit or direct any agency to use a short form or alternative method of public information where (1) notice thereof is published in the Federal Register and in the daily issues thereof, and (2) the Director certifies in writing that the short form or alternative method used is adequate to inform the public.

"(b) ORDERS AND OPINIONS.—Each agency shall promptly publish or, in accordance with the published rule of the agency stating where and how the same may be obtained or examined, make available to public inspection all orders and opinions of such agency. No order or opinion of any agency shall be valid or effective, nor may it be invoked by the agency for any purpose, until it has been so published or made available for public inspection and copying.

Congress sought in the last sentence of section 3 (a) of the Administrative Procedure Act to protect private persons from the consequences of an agency's failure to publish a rule. Under this section, no person was in any manner to be required to resort to organization or procedure not published in accordance with that section. As worded, this sanction does not clearly apply to statements of agency operation and substantive rules, as well as to organization and procedure. Therefore, provision is made that no description, statement, substantive or procedural rule, notice, or instruction shall be valid or effective against any person or party unless published.

Section 200 (b)—Orders and Opinions.—The provisions of section 3 (b) of the Administrative Procedure Act have been strengthened in section 200 (b) of the Code. The Administrative Procedure Act presently requires that every agency shall publish or make available to public inspection all final orders or opinions in the adjudication of cases, except those required for good cause to be held confidential and not cited as precedent.

Section 200 (b) changes the provisions of section 3 (b) in three ways. First, each agency would be required to publish its orders or make them available "promptly," that is, within a reasonable time after the effective date of the opinion or order. Second, the exception with respect to an opinion and order required for good cause to be held confidential has been removed from the statute. Third, no order or opinion of any agency would be valid or effective, nor could it be invoked by the agency for any purpose, until it had been published or made available to public inspection.

Section 200 (c)—Public Records.—The right of a citizen to have access to public records of the executive branch has been strengthened and extended under section 200 (c) of the Code. Section 3 (c) of the Administrative Procedure Act merely requires that matters of official record shall be made available to persons properly and directly concerned, except where a statute otherwise provides or where the agency finds that the information should be held confidential for good cause.

The present restriction on the availability of public records to persons properly and directly concerned has been removed under section 200 (c). All matters of official record would hereafter be

"(c) PUBLIC RECORDS.—Except as otherwise required by statute, all matters of official record shall, in accordance with the published rule of the agency stating where and how the same may be examined, be made available to public inspection and copying, except information of a personal or private nature the disclosure of which the agency finds is not in the public interest. Such matters of official record shall include, but shall not be limited to, docket records, pleadings, claims, applications, testimony, exhibits, reports, or information submitted to or received by the agency in connection with any actual or proposed agency proceeding.

"RULE MAKING

"SEC. 201. In order to establish procedures for rule making by agencies and to afford interested persons an opportunity to participate therein—

made available not only for public inspection but also for copying.

The revised section retains the exception with respect to matters required by statute to be kept confidential, such as business records submitted to a regulatory agency. The section further excepts information of a personal or private nature, the disclosure of which the agency finds is not in the public interest. This latter exception is designed solely to protect from public scrutiny such personal and private records as medical examinations, marital histories, and similar documents to which the public should have no access.

Section 200 (c) contains a much needed definition of public records. Matters of official record would include under this section, but would not be limited to, docket records, pleadings, claims, applications, testimony, exhibits, reports, or information submitted to or received by the agency in connection with any actual or proposed agency proceeding. This provision is largely designed to prevent the withholding of documents used for decisions in informal adjudicatory proceedings.

Section 201—Rule Making

This section is the counterpart of section 4 of the Administrative Procedure Act, 5 U. S. C. § 1003 (1952). The introductory clause of that section has been revised to state the policy on which the present statute is based. This policy is to encourage rule making by agencies, as well as to afford interested persons an opportunity to participate therein. In other words, where agencies are authorized to implement statutes by rule making, every interested person should have an opportunity to participate in the rule making procedures, consistent with the public interest in a prompt and efficient disposition of such matters.

The introductory clause to section 201 of the Code supersedes the existing statement of exceptions in section 4 of the 1946 act as to "(1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." These exceptions have been eliminated as unnecessary or unwarranted.

"(a) NOTICE.—General notice of proposed rule making by any agency shall be published in the Federal Register and in the daily issues thereof, unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law, and shall include (1) a statement of the time, place, and nature of the public rule making proceedings, which shall not be less than thirty days after such publication, (2) reference to the authority under which the rule is proposed, and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

"(b) PROCEDURE.—After notice of the proposed rule making is given, as required by this section, the agency shall afford all interested persons an opportunity to participate in the rule making through the submission to it of written or oral data, views, or arguments, and the agency shall fully consider the same. Simultaneously with the promulgation of the rule, the agency shall issue a concise statement of the principal considerations for and against its adoption. Where rules are required under the Constitution or by statute to be made after opportunity for a hearing by an agency, the requirements of sections 205 and 206 of this Code shall apply in place of the provisions of this subsection.

Section 201 (a)—Notice.—The first sentence of section 4 (a) of the Administrative Procedure Act is substantially embodied in the first sentence of section 201 (a) of the Code. The notice requirements of the 1946 act are followed in the Code, except that no rule making proceeding may take place less than 30 days after publication of the notice of the proceeding.

Section 201 (a) does not contain the exceptions found in the second sentence of section 4 (a). These exceptions generally cover interpretive rules, general statements of policy, rules of agency organization, rules of practice and procedure, and those formulated in situations in which the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

Under the Code provision, interested parties are given an opportunity to present views regardless of the kinds of rules proposed. The exception covering situations in which the agency considers notice and public procedure as impracticable, unnecessary, or contrary to the public interest is too broad and is eliminated in section 201 (a).

Section 201 (b)—Procedure.—Rule making procedures under section 201 (b) of the Code remain substantially the same as under section 4 (b) of the Administrative Procedure Act, with two exceptions.

Under the revised procedure the agency is required to afford all interested persons an opportunity to participate in the rule making through submission to it of oral data, views, or arguments. Simultaneously with the promulgation of the rule the agency is required to issue a concise statement of the principal considerations for and against its adoption.

The last sentence of section 4 (b) requires that formal hearing and decision procedures be followed where rules are required by statute to be made on the record after opportunity for an agency hearing. This provision has been amended to require formal rule making procedures where the Constitution, as well as a statute, renders necessary an opportunity for a hearing by the agency.

"(c) EFFECTIVE DATES.—The required publication or service by any agency of any substantive rule, other than one granting or recognizing exemption or relieving restriction, shall be made not less than thirty days prior to the effective date thereof, except where the agency finds that due and timely execution of its functions imperatively and unavoidably requires such rule to become effective within a shorter period and publishes such finding, together with a brief statement of the reasons therefor, with the rule.

"(d) EMERGENCY RULES.—Rules may be promulgated without the notice and procedure required by this section, to have effect for not more than 120 days without renewal, where the agency finds (1) that immediate adoption of a rule is necessary for the preservation of the public health, safety, or morals, and (2) that observance of the requirements of this section would be contrary to the public interest. The agency's finding and a brief statement of the reasons therefor shall be incorporated in the rule as filed for publication in the Federal Register and in the daily issues thereof.

Section 201 (c)—Effective Dates.—Section 201 (c) of the Code preserves the present requirement of section 4 (c) of the Administrative Procedure Act that 30 days must elapse between the publication of a substantive rule and the effective date thereof. The revised code section substantially changes the present exception under which an agency may ignore the 30-day period upon a finding of good cause. Such an exception should only be made where the agency finds that due and timely execution of its functions imperatively and unavoidably requires such rule to become effective within a shorter period and publishes a finding to that effect with the rule, and the Code so provides.

Section 201 (d)—Emergency Rules.—This subsection is new. It provides a simple method for agencies to use in emergencies, when rule making procedures under the other provisions of section 201 are not suited to the time factor. In this respect, section 201 (d) supplies a more logical exception than that presently found in section 4 (a) of the present statute with respect to rule making where notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

Under section 201 (d), rules may be promulgated without notice and procedure otherwise required by section 201, to have effect for not more than 120 days without renewal, where the agency finds (1) that immediate adoption of a rule is nec-

"(e) PETITIONS.—Every agency shall accord all interested persons the right to petition for the issuance, amendment, or repeal of a rule. Where the agency does not initiate rule making proceedings for such purpose, it shall promptly state its reasons for not doing so, shall transmit the same to the petitioner, and shall make the petition and the action taken by the agency, or its failure to act, matters of record available for public inspection and copying.

"ADJUDICATION

"SEC. 202. In order that there may be a full and fair determination of factual issues in every case of agency adjudication—

essary for the preservation of the public health, safety, or morals, and (2) that observance of the requirements of this section would be contrary to the public interest. The agency's finding and a brief statement of the reasons therefor must be incorporated in the rule as filed for publication in the Federal Register. Emergency rules are only valid for 4 months and cannot be continued beyond that date, unless the rule making proceedings are carried out in accordance with the statute.

Section 201 (e)—Petitions.—Section 4 (d) of the Administrative Procedure Act merely provides that every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule. This provision has been strengthened in section 201 (e) of the Code. Under the Code, where the agency does not initiate rule making proceedings after the filing of such a petition, it shall promptly state its reasons for not so doing, shall transmit the same to the petitioner, and shall make the petition and the action taken by the agency or its failure to act matters of public record. The purpose of this expanded section is to require agencies to take action on petitions for the making of amendments or repeals of rules.

Section 202—Adjudication

Section 202 is the counterpart in the Code of section 5 of the Administrative Procedure Act, 5 U. S. C. § 1004 (1952). The Code section eliminates the introductory clause of the existing statute in favor of a statement of policy requiring that there be a full and fair determination of factual issues in every case of agency adjudication.

In the present statute, the introductory clause contains six exceptions. To the extent that such exceptions are to be recognized, they have been handled elsewhere in the code.

Thus, a full adjudicatory hearing must be held under the Code with respect to any matter subject to a subsequent trial of the law and the facts de novo in any court, with an election for complainant or claimant to have the case tried first and exclusively in a court of competent jurisdiction, under section 207 (h) of the Code. The second exception in section 5 of the Administrative Procedure Act covering the selection or tenure of a Government employee is retained by an express exclusion thereof from the formal hearing requirements

"(a) NOTICE.—Persons entitled to notice of an agency proceeding shall be given timely information of (1) the time, place, and nature thereof, (2) the legal authority and jurisdiction under which the proceeding is to be held, and (3) the matters of fact and law asserted, in accordance to the extent practicable with the practice and requirements of pleading in the United States district courts. The persons to whom such notice is given shall give prompt notice of the matters of fact and law controverted by them, and their failure to do so shall constitute a waiver of contest as to such matters. In fixing the times and places for proceedings, due regard shall be had for the convenience and necessity of the parties and their representatives.

"(b) PROCEDURE.—The agency shall afford all interested parties an opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals for simplification of proceedings or adjustment of controversial issues or requests by consent, whether such proceedings are interlocutory, summary, or otherwise. Where an opportunity for an agency hearing is required under the Constitution or by statute, the parties shall be accorded a hearing and decision in conformity with sections 205 and 206 of this Code. In all other cases of adjudication, which shall for this purpose include the performance of all proprietary functions such as the use or disposition of public property or the execution of public contracts in which private rights, claims, or privileges are asserted or affected, a decision shall be proposed by a duly designated and responsible officer of the agency and served upon the parties by mail

under section 205 of the Code. Proceedings involving inspection, tests, or examinations are now covered in section 204 (e) of the Code. The present exceptions in section 5 of the 1946 act covering the conduct of military, naval, or foreign affairs functions, cases in which an agency is acting as an agent of a court, and the certification of employee representatives have been eliminated as unnecessary or unwarranted.

Section 202 (a)—Notice.—This section remains essentially the same as section 5 (a) of the Administrative Procedure Act. The only substantive change in section 202 (a) is to require that pleadings in administrative adjudication shall conform, insofar as practicable, with the practice and requirements for pleadings in the United States district courts under the Federal Rules of Civil Procedure.

Section 202 (b)—Procedure.—This section substantially reenacts the provisions of section 5 (b) of the Administrative Procedure Act with respect to adjudication requiring opportunity for an agency hearing. The circumstances under which a formal hearing must be held have been extended to cases in which such a hearing is required by the Constitution, as well as by statute. This wording eliminates the requirement, now contained in the introductory clause to section 5, that opportunity for a formal hearing only be required in a case where the statute demands such a hearing "on the record."

Beginning with the third sentence, there have been added to this subsection provisions for procedure in nonhearing adjudicatory cases, wholly lacking in the present statute. This procedure applies to all cases of nonhearing adjudication, including the performance of proprietary functions, such as the use or disposition of public property or the execution of public contracts, in which private rights, claims, or privileges are asserted or affected.

Under the nonhearing procedure, the decision must be proposed by a duly designated and responsible officer of the agency and served upon the par-

or delivered in person. Every such proposed decision shall be subject to review within the agency by a board or superior officer designated by the agency as its reviewing authority for such purposes. The reviewing authority shall make its determination with respect to the proposed decision only after the receipt and full consideration of the evidence and the views and arguments of all interested parties. The findings and conclusions of law of the reviewing authority and all such evidence, views, and arguments shall be matters of record available for public inspection and copying. In cases involving the public health, safety, or morals, in which the agency finds and states on the public record the reasons why time, the nature of the proceeding, or the public interest unavoidably and imperatively so requires, the agency may take emergency action, and the procedural requirements herein provided for shall be carried out thereafter as promptly as possible.

"LICENSING

"SEC. 203. (a) IN GENERAL.—In any case in which application is made to an agency for a license required by law, the agency, with due regard to the rights and privileges of all interested parties or adversely affected persons, shall set and conduct the proceedings in accordance with this Code or as otherwise required by law.

"(b) TERMS AND CONDITIONS.—Terms, conditions, or requirements limiting any license shall be invalid to the extent that they are found by a court of competent jurisdiction not to be plainly and reasonably in the public interest or not within the purposes, scope, or stated terms of the statute pursuant to which the license is issued or required.

"(c) SUSPENSION AND REVOCATION.—No withdrawal, suspension, revocation, or annulment by an agency of any license shall be lawful unless, prior to the institution of agency proceedings therefor, (1) facts or conduct that may warrant such action shall have been called to the attention of the licensee by the agency in writing, (2) the agency, upon reasonable notice, shall have afforded the licensee opportunity to submit written data, views, and arguments with respect to such facts or conduct, and (3) the licensee shall

ties by mail or delivered in person. Every such proposed decision is subject to review by a board or superior officer designated by the agency as its reviewing authority for such purposes. This reviewing authority makes its determination with respect to a proposed decision only after the receipt and full consideration of any oral or written evidence presented. Its findings and conclusions of law, as well as all evidence and briefs submitted, are matters of public record, available to public inspection and copying. This procedure applies in every nonhearing case, except where the agency is required unavoidably to take emergency action in cases involving the public health, safety, or morals. Once such emergency action is taken, the procedural requirements of section 202 (b) must be complied with thereafter as promptly as possible.

Section 203—Licensing

This section in the Code is based in large part upon the provisions of section 9 (b) of the Administrative Procedure Act, 5 U. S. C. § 108 (b) (1952). The subject of licensing is of sufficient importance to require a separate section strengthening the present procedural safeguards with respect thereto.

Section 203 (a)—In General.—This section copies in substance the provisions of the first sentence of section 9 (b) with respect to the procedure for licensing.

Section 203 (b)—Terms and Conditions.—This new subsection is designed to provide a general rule of law for situations in which licensing requirements, conditions, or terms are proposed by an agency. Terms, conditions, or requirements limiting any license are to be invalid to the extent that they are found by a court of competent jurisdiction not to be plainly and reasonably in the public interest and not within the purposes, scope, or stated terms of the statute pursuant to which the license is issued or required.

Section 203 (c)—Suspension and Revocation.—This subsection generally incorporates the procedure contained in the second sentence of section

have been given a reasonable opportunity to comply with all lawful requirements; except that where the agency finds that the public health, safety, or morals unavoidably and imperatively requires emergency action, and incorporates that finding in its order, summary suspension of a license may be ordered pending proceedings for revocation, which shall be promptly instituted and determined.

"(d) RENEWAL.—In any case in which the licensee has made timely and sufficient application for the renewal of a license or for a new license, with reference to any activity of a continuing nature, the existing license shall not expire until such application shall have been finally determined by the agency, and, in case the application shall have been denied or the terms of the new license limited, opportunity shall be afforded for judicial review.

"(e) AMENDMENT OR MODIFICATION.—Any modification or limitation of an outstanding license shall be subject to all the procedural requirements of law with respect to the revocation of a license.

"MISCELLANEOUS PROCEDURAL MATTERS

"SEC. 204. (a) INVESTIGATIONS.—No process, requirement of a report, inspection, or other investigatory act or demand shall be initiated, issued, made, or enforced by any agency in any manner or for any purpose unless it is within the jurisdiction of the agency and is authorized by statute. Every person compelled to testify or to submit data or evidence to any agency shall be entitled to the benefit of counsel and to retain, or on payment of lawfully prescribed costs to procure, a copy of the transcript of such testimony, data, or evidence. Any court of competent jurisdiction is authorized to restrain any acts threatened or continuing contrary hereto, or to compel acts required hereby.

9 (b) of the Administrative Procedure Act. Whereas the 1946 statute permits withdrawal, suspension, revocation, or annulment of any license in cases of willfullness or those involving the public health, interest, or safety, the Code only permits suspension of a license in cases where the agency finds that the public safety, health, or morals unavoidably and imperatively requires emergency action. Promptly thereafter, the agency must institute proceedings for revocation in accordance with the other provisions of this section.

Section 203 (d)—Renewal.—This subsection closely follows the wording of the third sentence in section 9 (b) of the Administrative Procedure Act. However, no existing license can expire under the Code where the application for renewal has been denied, and full judicial review of the denial has not taken place.

Section 203 (e)—Amendment or Modification.—This subsection contains a new requirement with respect to modification or limitation of an outstanding license. Under its provisions, no such modification or limitation would be valid unless made in accordance with the procedural requirements applicable to license revocation.

Section 204—Miscellaneous Procedural Matters

This section replaces section 6 of the Administrative Procedure Act, 5 U. S. C. § 1005 (1952). Like the present statute, this section contains subparagraphs covering investigations, subpenas, and denials. Additional provisions have been added covering separation of functions; inspections, tests, or examinations; and declaratory orders. Section 6 (a) of the present statute relating to appearances is excluded from section 204 and has been reenacted with some changes in section 500 of the Code.

Section 204 (a)—Investigations.—This subsection amplifies the provisions of section 6 (b) of the Administrative Procedure Act. Under the present act, no process, requirements of a report, inspection, or other investigatory act or demand can be issued, made, or enforced in any manner except as authorized by law. The new subsection requires that no investigation may be initiated, and no investigatory act or demand undertaken, unless within the jurisdiction of the agency and as authorized by

"(b) SUBPENAS.—Presiding officers are authorized to issue subpenas for the appearance of witnesses or the production of relevant books, records, or data in any proceeding required under the Constitution or by statute to be determined after opportunity for an agency hearing. Subpenas shall be issued upon request without discrimination as between parties, public or private. The agency may, by rule, require a statement or showing of general relevance and reasonable scope of evidence sought. Any person subject to a subpena may, before compliance therewith and on timely petition, obtain from any court of competent jurisdiction a ruling as to the lawfulness thereof. The court shall quash the subpena or similar process or demand to the extent that it finds the same to be unreasonable in terms, irrelevant in scope, beyond the probable jurisdiction of the agency over the person or subject matter involved, not competently issued, or otherwise not in accordance with law. In any proceeding for enforcement, any court of competent jurisdiction may issue an order requiring the appearance of witnesses or the production of evidence or data within a reasonable time, under penalty of punishment for contempt in case of contumacious failure to comply therewith.

"(c) SEPARATION OF FUNCTIONS.—No reviewing authority acting pursuant to section 202 (b) of this Code, and no presiding or deciding officer acting pursuant to sections 205 and 206 hereof, shall (1) consult any party on any issue of fact

statute. This change is intended to authorize administrative investigations only when in strict accordance with statutory authority.

Under the Administrative Procedure Act, a person under investigation is entitled to a copy of the transcript of his testimony, data, or evidence, except that, in nonpublic investigatory proceedings, he may be limited merely to inspection of the transcript. The Code requires that he be permitted to have the benefit of counsel and to retain a copy of his testimony during any investigation.

Section 204 (a) finally provides that any court of competent jurisdiction may restrain any acts threatened or continuing contrary to its provisions. This means that a party under investigation can immediately challenge the probable jurisdiction of the agency by an appropriate action in court.

Section 204 (b)—Subpenas.—This subsection expands the authority of agencies to issue subpenas, as presently provided under section 6 (c) of the Administrative Procedure Act. In that section, agency subpenas are permitted only as otherwise authorized by law. Section 204 (b), on the other hand, directly authorizes a presiding officer in a formal adjudicatory proceeding to issue subpenas for the appearance of witnesses or the production of relevant books, records, and data.

The new subsection contains safeguards to prevent abuse of the general power of subpena. First, subpenas shall be issued upon request impartially and without discrimination as between parties, either public or private. Second, the present provisions covering court proceedings to enforce a subpena have been specified with greater particularity and protection to the individual affected. Under the Code, a person subject to a subpena may, before compliance therewith and on timely petition, obtain from any court of competent jurisdiction a ruling as to the lawfulness of the subpena. The court may quash the subpena to the extent that it finds the subpena to be unreasonable in terms, irrelevant in scope, beyond the jurisdiction of the agency over the person or subject matter involved, not competently issued, or otherwise not in accordance with law.

Section 204 (c)—Separation of Functions.—The substance of section 5 (c) of the Administrative Procedure Act has been incorporated in section 204 (c) of the Code, with some amplification. Section

except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters as authorized by law, (2) be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigatory or prosecuting functions for the agency, (3) be advised by any other agency officer or employee except as a witness or counsel in public proceedings of which all parties have notice and in which they have full opportunity to participate, or (4) permit any other agency officer or employee to participate in any way in the formulation of findings or decisions, except that agency members, or the reviewing authority acting pursuant to section 202 (b) of this Code, may have the assistance of persons who are members of an independent review staff. If it is alleged that there is a violation of this subsection in connection with any agency action, the reviewing court shall determine the facts and, if such violation is proved, may hold such agency action unlawful and invalid.

"(d) EXPEDITION AND DENIALS.—Every agency shall proceed with reasonable dispatch to conclude any matter presented to it, except that due regard shall be had for the convenience and necessity of the parties or their representatives. Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding or action, and such notice shall be accompanied by a simple statement of the grounds therefor.

5 (c) presently excepts from the separation of functions' requirement initial licensing, proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers, and the exercise of functions by the agency or any member thereof. These exceptions are omitted in the Code, and separation of functions applied generally to all adjustments and rule making required under the Constitution or by statute to be made after hearing.

Under the Code, no presiding or deciding officer or intraagency reviewing authority would be permitted (1) to consult any person or party on any issue of fact unless upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters as authorized by law, (2) to be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigatory or prosecuting functions for any agency, (3) to be advised by any other agency officer or employee except as a witness or counsel in public proceedings of which all parties have notice and in which they have full opportunity to participate, or (4) to allow any other agency officer or employee to participate in any way in the formulation of findings or decisions. In reviewing a decision, the agency and its members and an intraagency reviewing authority could, of course, have the assistance of persons who are members of an independent review staff.

The last sentence of section 204 (c) makes it plain that its provisions are judicially enforceable. Upon petition of a party that there is a violation of this subsection in connection with any agency action, a reviewing court shall determine the facts and, if such violation is proved, shall hold such agency action unlawful and invalid.

Section 204 (d)—Expedition and Denials.—This subsection is designed to put enforcement teeth into the present requirements of the Administrative Procedure Act that every agency act with reasonable dispatch and that prompt notice of any denial be given. The reasonable dispatch provision contained in the fourth sentence of section 6 (a) of the 1946 act has become the first sentence of section 204 (d). Section 6 (d) of that statute covering denials is the second sentence of the Code subsection.

Upon application made to any court of competent jurisdiction by a party to any agency proceeding or action, and a showing to the court that there has been undue delay in connection with such proceeding or action, the court may issue a mandatory injunction to the agency involved to proceed to a decision in the matter. In any such case the agency involved may show that the delay was necessary and unavoidable.

"(e) INSPECTIONS, TESTS, OR EXAMINATIONS. —In any proceeding in which an agency decision rests solely on inspections, tests, or examinations, no decision by any officer or employee of the agency shall be valid or effective unless, upon appropriate request by the person or party affected, review of such inspections, tests, or examinations shall first have been afforded by a board or superior officer designated by the agency as its reviewing authority for such purposes; except that where the officer or employee finds that the public health, safety, or morals requires emergency action, and incorporates that finding in his order, summary action may be taken pending such review, which shall be promptly instituted and determined.

"(f) DECLARATORY ORDERS. — Every agency shall provide by rule for the filing and prompt disposition of petitions for a declaratory order to terminate a controversy, or to remove uncertainty in a controversy as to the applicability to the petitioner of any statutory provision or of any rule or order of the agency. Such proceedings shall be subject to the provisions of this Code, as well as of other applicable law, and the order disposing of the petition in any such case shall have the same effect as other agency orders.

"HEARINGS

"SEC. 205. In every case of adjudication and rule making required to be made after opportunity for hearing under the Constitution or by statute, except with respect to the selection of persons for, their tenure in, and dismissal from, the civilian and military service of the United States—

The third sentence of section 204 (d) has been added to assure that these statutory rights are enforceable and thus to eliminate controversy. Upon an appropriate application made to any court of competent jurisdiction by a party to any agency proceeding or action and a showing to the court that there has been undue delay in connection with such proceeding or action, the court is empowered to issue a mandatory injunction to the agency involved to proceed to a decision in the matter. In any such case, the agency involved may show that the delay was necessary and unavoidable.

Section 204 (e)—Inspections, Tests, or Examinations.—Section 5 (3) of the Administrative Procedure Act excepts from the requirement of formal adjudication under that section proceedings in which decisions rest solely on inspection, tests, or elections. Under the Code, no decision by any officer of an agency involving tests, inspections, or examinations would be valid or effective unless, upon appropriate request by the person or party affected, review of such tests, inspections, or examinations shall first have been afforded by an intraagency reviewing authority.

Section 204 (f)—Declaratory Orders.—Section 204 (f) expands and amplifies the present provisions of section 5 (d) of the Administrative Procedure Act with respect to declaratory orders. Such orders presently are confined to adjudicatory matters.

The new subsection requires that every agency provide by rule for the filing and prompt disposition of petitions for declaratory rules or orders to terminate a controversy or to remove uncertainty as to the applicability to the petitioner of any statutory provisions or of any rule or order of the agency. Such proceedings would be subject to the provisions of the Code, as well as of other applicable law, and the order disposing of the petition in any such case would have the same effect as other agency orders.

Section 205—Hearings

The introductory clause to section 205, although reworded, is substantially the same as that contained in section 7 of the Administrative Procedure Act, 5 U. S. C. § 1006 (1952). The procedures of this section would apply in every case of adjudication and rule making required to be made after

"(a) PRESIDING OFFICERS.—There shall preside at the taking of evidence only (1) the agency, (2) one or more members of the body which comprises the agency, (3) a hearing commissioner appointed pursuant to Title V of this Code, or (4) a board specifically authorized by statute to conduct specified classes of proceedings. The functions of all such presiding officers, as well as officers participating in decisions in conformity with section 206 of this Code, shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified, and, upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency or a hearing commissioner assigned for that purpose shall promptly determine the matter as a part of the record and decision in the case.

"(b) HEARING POWERS. — Presiding officers shall have authority to (1) administer oaths and affirmations, (2) issue subpenas, (3) rule upon offers of proof and receive evidence, (4) take depositions, or cause depositions to be taken, upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding, and dispose of motions for the discovery and production of relevant documents and things for inspection, copying, or photographing, (5) regulate the course of the hearings, (6) direct the parties to appear and confer to consider the simplification of the issues, admissions of fact or of documents to avoid unnecessary proof, and limitation of the number of expert witnesses, and issue an appropriate order therefor

opportunity for hearing under the Constitution or by statute.

Two exceptions are contained in the introductory clause to section 205. These cover the selection, tenure, and dismissal of both civilian employees and officers, now exempted under section 5 (2) of the Administrative Procedure Act, and of military personnel in the armed services, now exempted under section 2 (a) (4) of the 1946 act. The purpose of this limited exemption is merely to exclude these personnel procedures from the formal hearing and decisional requirements of the Code. All other requirements of the Code, including public information, rule making, judicial review, and the right of counsel, would be applicable.

Section 205 (a)—Presiding Officers.—This section is substantially the same as section 7 (a) of the Administrative Procedure Act, except that the present authority of officers specially authorized by statute to conduct specified classes of proceedings has been repealed. Under the Code, hearing commissioners will be substituted for such officers.

Section 205 (b)—Hearing Powers.—The powers of presiding officers designated by section 205 (a) have been expanded to conform more closely with the powers of Federal district court judges. As under section 7 (b) of the 1946 act, authority is granted to (1) administer oaths and affirmations; (3) rule upon offers of proof and receive evidence; (5) regulate the course of the hearing; (7) dispose of procedural requests or similar matters; and (9) take any other action authorized by agency rules consistent with the statute.

The powers of presiding officers have been expanded in the following respects:

(2) To issue subpenas in accordance with the general subpena power contained in section 204 (d) of the Code;

(4) To take or cause depositions to be taken upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding, and to dispose of motions for the discovery and production of relevant documents and things for inspection, copying, or photographing;

(6) To direct the parties to appear and confer to consider the simplification of the issues and other pretrial matters, and to issue an appropriate order therefor which shall control the subsequent course of the proceedings;

which shall control the subsequent course of the proceeding, (7) dispose of motions to dismiss for lack of jurisdiction by the agency over the subject matter or parties or for any other proper reason, (8) dispose of motions to amend, or to dismiss without prejudice, application and other pleadings, (9) dispose of procedural requests or similar matters, (10) make decisions, (11) reprimand or exclude from the hearing any person for any improper or indecorous conduct in their presence, and (12) take any other action authorized by any rule consistent with this Code or in accordance, to the extent practicable, with the trial procedure in the United States district courts.

"(c) INTERLOCUTORY APPEALS.—A presiding officer may certify to the agency, or allow the parties an interlocutory appeal on, any material question arising in the course of a proceeding, where he finds that it is necessary to do so to prevent substantial prejudice to any party or to expedite the conduct of the proceeding. The presiding officer or the agency may thereafter stay the proceeding if necessary to protect the substantial rights of any of the parties therein. The agency, or such one or more of its members as it may designate, shall determine the question forthwith, and the hearing and further decision shall thereafter be governed accordingly. No interlocutory appeal shall otherwise be allowed.

"(d) EVIDENCE.—Except as otherwise provided by statute, the proponent of a rule or order shall have the burden of proof, and every party to any agency proceeding shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. In rule making, any oral or documentary evidence may be received, but, as a matter of policy, there shall be excluded all irrelevant, immaterial, or unduly repetitious evidence. No rule shall be made by any agency except upon consideration of the whole record, or such portions thereof as may be cited by the parties to the agency proceeding, and any such rule shall be supported by and shall be in accordance with the reliable, probative, and substantial evidence in the record. In adjudications, the rules of evidence and requirements of proof shall conform, to the extent practicable,

(7) To dispose of motions to dismiss for lack of jurisdiction by the agency over the subject matter or parties or for any other proper reason;

(8) To dispose of motions to amend, or to dismiss without prejudice, applications or other pleadings;

(10) To make initial decisions; and

(11) To reprimand, or exclude from the hearing, any person for any improper or indecorous conduct in his presence.

This expansion of powers is designed to render presiding officers quasi-judicial trial judges. In this respect, section 205 (b) (12) authorizes a presiding officer to take any other action in accordance, to the extent practicable, with trial procedure in United States district courts.

Section 205 (c)—Interlocutory Appeals.—This is a new subsection. It is designed to simplify administrative proceedings and to save expense, both governmental and private, when some question of law or policy arises which is dispositive of the case and hence warrants immediate decision by the agency.

The subsection incorporates into statute the best provisions of agency rules covering interlocutory appeals. Such an appeal is permitted under the Code where a presiding officer finds that it is required in the public interest to prevent substantial prejudice to any party or to expedite the conduct of a proceeding. The presiding officer may certify the question to the agency or allow the parties an interlocutory appeal thereon. The proceedings may be stayed only if the presiding officer or the agency finds such a step necessary to protect the substantial rights of any of the parties. Such an appeal must be determined by the agency without delay. No interlocutory appeals otherwise are to be allowed.

Section 205 (d)—Evidence.—With one important exception, this subsection is substantially the same as section 7 (c) of the Administrative Procedure Act. The important change is that, in adjudications, the rules of evidence and requirements of proof shall apply as in civil nonjury cases in the United States district courts.

Some agencies have adopted this standard of proof as a matter of policy. Uniformity is desirable between courts and agencies, since the former

with those in civil nonjury cases in the United States district courts. The agency may by general rule adopt procedures, or the presiding officer may specially provide, for the submission of all or part of the evidence in written form, provided that no party is substantially prejudiced thereby. The complete transcript of the record in any agency proceeding shall be made available to the parties upon payment of lawfully prescribed costs.

"(e) OFFICIAL NOTICE.—Where the decision by any agency includes official notice of a material fact beyond the evidence appearing in the record, the decision shall be without force or effect unless (1) the fact so noticed is specified in the record or is brought to the attention of the parties before decision, and (2) every party adversely affected by the decision is afforded an opportunity to controvert the fact so noticed: *Provided,* That nothing in this subsection shall affect the application by an agency in appropriate circumstances of the doctrine of judicial notice.

"DECISIONS

"SEC. 206. In every case of adjudication and rule making required under the Constitution or by statute to be determined after opportunity for an agency hearing—

"(a) SUBMITTALS AND DECISIONS.—Prior to each decision by an agency which presides, or the initial decision by a presiding officer in an agency proceeding, the parties to the agency proceeding shall be afforded an opportunity to submit (1) proposed findings of fact, and (2) both written and oral argument. Upon review of any initial decision, the agency shall afford the parties an opportunity to submit (1) written exceptions to the decision, (2) written briefs and arguments thereon, and (3) oral argument unless it shall find that full and adequate presentation of the issues does not so require. The official record shall show the ruling upon each finding or exception presented; and, in the absence thereof, no agency action, decision, conclusion, or finding based thereon shall be final or effective. All decisions and initial decisions shall include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented

review the actions of the latter. Where both courts and agencies use the same evidentiary tests, judicial review of agency decisions may be expedited.

Section 205 (e)—Official Notice.—This subsection substantially incorporates the last sentence of section 7 (d) of the Administrative Procedure Act with respect to official notice. The present requirement is that, where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an oportunity to show the contrary. Section 205 (e) provides that the decision shall be without force or effect unless (1) the fact so noticed is specified in the record or is brought to the attention of the parties before decision, and (2) every party adversely affected by the decision is afforded an opportunity to controvert the fact so noticed. Where appropriately exercised, the power of judicial notice is, of course, retained by the agencies without limitation.

Section 206—Decisions

Like section 205, this section would apply in every case of adjudication and rule making required to be made after opportunity for hearing under the Constitution or by statute. It substantially incorporates the provisions of section 8 of the Administrative Procedure Act, 5 U. S. C. § 1007 (1952), with two exceptions. Under the Code, presiding officers are empowered to render initial decisions in all cases, and, except as to questions of policy conferred by statute, the scope of review by an agency of an initial decision is the same as that by a court of the agency's decision.

Section 206 (a)—Submittals and Decisions.—Section 206 (a) largely follows section 8 (b) of the Administrative Procedure Act. However, the procedural safeguards therein with respect to formal adjudication and rule making have been strengthened and amplified. Under the Code section, an agency must provide oral argument in the review of any initial decision unless it finds that full and adequate presentation of the issue does not so require. Further, the present requirement that the official record shall show the ruling upon every finding or exception presented to an initial decision has been strengthened by the added provision that,

on the record, and (2) the appropriate rule, order, sanction, relief, or denial thereof; and such decisions and initial decisions shall become a part of the official record of the case and be available for public inspection and copying.

"(b) RECORD FOR DECISIONS.—For the purpose of the decision by an agency which presides, or the initial decision by a presiding officer in an agency proceeding, the record shall include (1) all pleadings, motions, and intermediate rulings, (2) evidence received or considered, including oral testimony, exhibits, and matters officially noticed, (3) offers of proof and rulings thereon, and (4) the findings proposed. No other evidence shall be considered by the agency or by the presiding officer. In cases in which the agency has presided at the reception of the evidence, the agency shall prepare, file, and serve upon the parties its decision. In all other cases the presiding officer shall prepare and file an initial decision, except where the parties to the proceeding, upon the closing of the record and with the consent of the agency, expressly waive their right to have an initial decision rendered by the presiding officer. In the absence of an appeal to the agency or a review upon motion of the agency within the time provided for such review by rule, every such initial decision shall thereupon become the decision of the agency.

"(c) REVIEW BY AGENCY.—For the purpose of review by the agency of the initial decision of the presiding officer, the record shall include (1) all matters constituting the record upon which such initial decision by the presiding officer was based, (2) the rulings upon the proposed findings, (3) the initial decision and findings of the presiding officer, and (4) the exceptions filed. No other evidence shall be considered by the agency upon such review. Issues may be limited on review by agency rule or upon notice to the parties to the proceeding. On review of initial decisions in adjudications and in rule making required under the Constitution or by statute to be made after hearing, the scope of review by the agency, except for questions of policy committed to the determination of the agency by the Congress, shall be the same as that of the court upon review of the decision of the agency. The agency may either remand the case to the presiding officer for such further proceedings as it may direct,

in the absence of such a showing, no agency action, decision, conclusion, or finding based thereon shall be final or effective. As in section 206 (b), subsection (a) eliminates the need for an intermediate report or recommended decision in formal adjudication.

Section 206 (b)—Record for Decisions.—This subsection substantially follows the present provisions of section 8 (a) of the Administrative Procedure Act. Like section 206 (a), however, the new provision does away with the necessity for the intermediate report or recommended decision. Where the agency itself does not preside at the reception of the evidence, the presiding officer shall prepare and file an initial decision unless the parties to the proceeding, upon the closing of the record and with the consent of the agency, expressly waive their right to have an initial decision rendered by the presiding officer. As under the present statute, every initial decision becomes the decision of the agency in the absence of an appeal to the agency or a review upon motion of the agency within the time provided by rule for such review.

Section 206 (c)—Review by Agency.—Under the first sentence of section 8 (a) of the Administrative Procedure Act, an agency is empowered to render an initial decision in any case in which the agency has not presided at the reception of the evidence. This authority is changed under section 206 (c) of the Code.

On review of an initial decision in adjudications and rule making required under the Constitution or by statute to be made after hearing, the scope of review by the agency, except as to questions of policy committed to the agency by Congress, would be the same as that of a court upon review of the decision of the agency. Upon review, the agency may either remand the case to the presiding officer for such further proceedings as it may direct, or it may affirm, set aside, or modify the order, or any sanction of relief entered thereon, in conformity with the facts and the law.

The new subsection also amplifies the scope of the record on agency review of an initial decision of a presiding officer. In such cases, the record would include (1) all matters constituting the record upon which such initial decision by the presiding officer was based, (2) the rulings upon the proposed findings, (3) the initial decision and findings

or it may affirm, set aside, or modify the order, or any sanction or relief entered thereon, in conformity with the facts and the law.

"(d) NONAVAILABILITY OF PRESIDING OFFICERS.—In any case in which an officer who has presided at the reception of evidence in an agency proceeding is disqualified or otherwise becomes unavailable, another presiding officer shall be assigned to continue with the case and thereupon shall have all the duties and powers of the officer he replaces.

"JUDICIAL REVIEW

"SEC. 207. In order to assure a plain, simple, and prompt judicial remedy for every legal wrong resulting from agency action, and notwithstanding any limitation by statute on the jurisdictional amount in controversy—

"(a) RIGHT OF REVIEW.—Any person adversely affected or aggrieved by agency action, including the failure of an agency to comply with any provision of this Code, shall be entitled to judicial review thereof. Proceedings for review may be brought against (1) the agency by its official title, (2) individuals who comprise the agency, or (3) any person representing the agency or acting on its behalf or account or under color of its authority.

"(b) FORM OF ACTION.—A person so adversely affected or aggrieved may contest the validity of agency action in a civil or criminal case brought by the agency, or on its behalf, for judicial enforcement, regardless of the availability or pendency of administrative review proceedings with

of the presiding officer, and (4) the exceptions filed. No other evidence shall be considered by the agency upon review.

Section 206 (d)—Nonavailability of Presiding Officers.—This new subsection amplifies the first sentence of section 5 (c) of the Administrative Procedure Act. Under the Code provision, in any case in which an officer who has presided at the reception of evidence in an agency proceeding is disqualified or otherwise becomes unavailable, another presiding officer would be assigned to continue with the case and thereupon have the duties and powers of the officer he replaces.

Section 207—Judicial Review

This section is designed to replace section 10 of the Administrative Procedure Act, 5 U. S. C. § 1009 (1952). The scope and nature of review have been clarified and strengthened under the Code provision.

The area of judicial review has been expanded in the introductory clause of section 207 by repealing the present exemption from judicial review of matters of agency discretion and statutory preclusion. These exemptions are both unnecessary and confusing. So far as they have a purpose, the subjects are dealt with elsewhere in the Code.

The introductory clause to section 207, as rewritten, sets forth the basic purpose of judicial review of administrative decisions. This is to assure a plain, simple, and prompt judicial remedy for every legal wrong resulting from agency action and notwithstanding any limitation by statute on the jurisdictional amount in controversy.

Section 207 (a) Right of Review.—This subsection is the Code counterpart of section 10 (a) of the 1946 act. The present statute merely states that any person suffering legal wrong because of agency action shall be entitled to judicial review thereof. The subsection has been rewritten to provide a right of review where any person is adversely affected or aggrieved by agency action, including the failure of an agency to comply with any provision of the Code. The subsection further provides that proceedings for review may be brought against (1) the agency by its official title, (2) individuals who comprise the agency, or (3) any person representing the agency or acting on its behalf or account or under color of its authority.

respect to such agency action. All other cases for review of agency decisions shall be commenced by the filing of a petition for review in the United States district court of appropriate jurisdiction except where a statute provides for judicial review in a specially constituted or named court. The petition shall contain the grounds upon which jurisdiction and venue are based, a concise and plain statement of the facts upon which petitioner bases his claim that he has been adversely affected or aggrieved, the reasons which the petitioner asserts entitle him to relief, and a statement of the relief which the petitioner seeks.

"(c) REVIEWABLE ACTS.—Every agency action shall be subject to judicial review. Any preliminary, procedural, or intermediate agency act or ruling shall be immediately reviewable in any case in which review of the final agency action would not provide an adequate remedy. Agency action shall be reviewable for the purposes of this section whether or not (1) any application for a declaratory order or any other form of reconsideration has been presented or considered, or (2) an appeal to superior agency authority has been taken, except where during the pendency thereof the agency provides that such action shall be inoperative.

"(d) INTERIM RELIEF.—Upon a finding that irreparable injury will otherwise result, (1) the agency, or the presiding officer in the case whose initial decision has become final and is the subject of the review, either on motion or on application therefor, shall postpone the effective date of the agency action pending judicial review, and (2) every reviewing court, including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court, upon application therefor and regardless of whether such an application previously shall have been made or denied by any agency or presiding officer, shall issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve the status of the case or the rights of the parties pending conclusion of the review proceedings.

"(e) RECORD ON REVIEW.—In every case of agency action subject to sections 205 and 206 of this Code, the record on review shall include (1) all matters constituting the record for action or review by the agency, (2) rulings upon exceptions,

Section 207 (b)—Form of Action.—This subsection is the Code counterpart of section 10 (b) of the Administrative Procedure Act. That section needlessly preserves existing technicalities of judicial review. It provides, for example, that the form of proceeding for judicial review shall be the special statutory review proceeding relative to the subject matter.

The Code subsection, in effect, provides for only one type of review action in place of the different technical forms now in effect, regardless of the availability or pendency of administrative review proceedings respecting such agency action. The adoption of the single form of action in this field is similar to Federal district court reforms in the same respect.

The simple form of action provided in this subsection consists of the filing of a petition for review in the United States district court of appropriate jurisdiction, except that, where a statute provides expressly for judicial review in any other specially constituted or named court, the petition shall be filed in that court. The petition shall contain a concise and plain statement of the facts upon which the petitioner bases his claim, the reasons which he asserts entitle him to relief, and a statement of the relief which the petitioner seeks.

Section 207 (c)—Reviewable Acts.—This subsection is the Code counterpart of Section 10 (c) of the Administrative Procedure Act, with one substantive change. The present statute provides that any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. This language has been amended under the Code to permit immediate review of any preliminary, procedural, or intermediate agency act or ruling in any case in which review of the final agency action would not provide an adequate remedy.

Section 207 (d)—Interim Relief.—This subsection is the Code counterpart of section 10 (d) of the Administrative Procedure Act and substantially reenacts the provisions of that section in more precise language.

Section 207 (e)—Record on Review.—This subsection is new. Its purpose is to eliminate controversy and confusion respecting the record on which judicial review may be had.

and (3) the decision, findings, and action of the agency. In every such case the reviewing court by rule, or the parties by stipulation, may limit the record on review, and agencies as well as private parties shall be subject to the assessment of costs in the discretion of the reviewing court for inclusion of matter in the record on review which is not relevant to the issues to be decided upon review. In all other cases, the record on review shall be made by trial de novo in the reviewing court and shall include all papers, documents, records, reports, statements, or other written matter filed with or submitted to the agency under the provision of any order, rule, or regulation of the agency, or of any applicable statute, and all forms of agency action taken or denied thereon.

"(f) SCOPE OF REVIEW.—The reviewing court shall determine whether agency findings, inferences, conclusions, or actions (1) are arbitrary or capricious, (2) constitute an abuse or clearly unwarranted exercise of discretion, or a denial of statutory right, (3) are contrary to constitutional right, power, privilege, or immunity, (4) are in excess of statutory jurisdiction, authority, purposes, or limitations, (5) fail to comply with the procedures or procedural limitations imposed by this Code or otherwise required by law, or (6) (i), to the extent that cases are subject to sections 205 and 206 of this Code, are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or (ii), in all other cases or with respect to all other issues, are unwarranted by the facts as established and determined in and by the reviewing court.

"(g) DECISIONS ON REVIEW.—The reviewing court shall disregard technical errors which it finds to be nonprejudicial. The reviewing court shall determine all relevant questions of law and interpret any constitutional and statutory provision involved, and it shall apply such determination to the facts duly found or established, whether or not such court is the trier of the facts. To the extent that any agency action is found by the reviewing court to be in accordance with law in all material respects, the court shall direct any appropriate enforcement requested. Where the agency action is found by the reviewing court not to be in accordance with law in any material respect, the court shall (1) compel agency action to be taken which has been unlawfully withheld or unjustifiably de-

Under the Code subsection, in cases involving formal adjudication or rule making, the record on review is defined to include (1) all matters constituting the record for action or review by the agency, (2) rulings upon exceptions, and (3) the decision, findings, and action of the agency. The record on review, of course, can be limited by rule of the reviewing court or by stipulation of the parties. To prevent unnecessarily long records on review, agencies as well as private parties will be subject to the assessment of costs, in the discretion of the reviewing court, for the inclusion of matter in the record upon review irrelevant to the issues to be decided.

The subsection also establishes that the record on review in agency adjudication, not effected after formal hearing and decision, shall be made by the reviewing court in a trial de novo. This provision will insure that an agency is required to produce all relevant evidence in order to establish the ground for the action which it takes. In such review, the record established de novo by the court shall include all papers, documents, records, reports, statements, or other written matter filed with or submitted to the agency under the provision of any order, rule, or regulation of the agency, or of any applicable statute, and all forms of agency action taken or denied thereon.

Section 207 (f)—Scope of Review.—This subsection is similar to the second sentence of section 10 (e) of the present statute, with two changes. The first change makes clear that an abuse of discretion extends to a clearly unwarranted exercise of discretion. The second change modifies the "substantial evidence" rule in Section 10 (e) (5) by correlating it to the "clearly erroneous" doctrine which is applied by appellate courts on review of decisions of United States district courts. Under the revision an agency decision may be set aside where clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

Section 207 (g)—Decisions on Review.—The first two sentences of this new subsection amplify other provisions of section 10 (e) of the Administrative Procedure Act, not incorporated in section 207 (f). The subsection strengthens the provisions of section 10 (e) in several material respects, largely based upon present operative practice in the field of appellate review.

layed, (2) set such action aside and restrain the enforcement thereof, and (3) afford such other relief as may be appropriate in the premises. The court shall not modify, amend, or revise any agency rule, order, or process, but, after having pronounced the law applicable, shall remand the case to the agency. The agency shall thereupon proceed in the case as it may deem proper, but only within its jurisdiction and in accordance with the judgment of such court.

"(h) CONCURRENT JURISDICTION.—Where de novo judicial review is provided by statute of decisions of agencies which may be entered only after a hearing required under the Constitution or by statute, the parties to the agency proceeding may elect to have the case tried and determined in the first instance in a court which would have jurisdiction to review de novo the final decision of the agency.

"LIMITATIONS OF AUTHORITY

"SEC. 208. In the exercise of any power, authority, or discretion by any agency, or by any officer or employee thereof—

"(a) IN GENERAL.—No sanction shall be imposed and no substantive rule or order shall be issued except within the letter, purpose, and intent of applicable statutes and the limitations of jurisdiction, powers, and authority prescribed by statute or otherwise imposed by law. Agency action shall not be deemed to be within the statutory authority and jurisdiction of the agency merely because such action is not contrary to the specific provisions of a statute.

Under the first of these, a reviewing court may apply all relevant principles of law and interpretations of constitutional and statutory provisions involved to the facts duly found or established. Under the second, the power of a reviewing court to compel the taking of agency action, unlawfully withheld or unjustifiably delayed, is clarified. Under the third, the reviewing court is prohibited from modifying, amending, or revising any agency rule, order, or process and required to remand the case to the agency. Upon remand, the agency may proceed in the case as it may deem proper but only within its jurisdiction and in accordance with the judgment of the reviewing court.

Section 207 (h)—Concurrent Jurisdiction.—This subsection provides that, where a case is triable again in a court after administrative proceedings, the moving party may have the case tried in the court in the first instance. The purpose is to eliminate duplicating trials of the same issues, in order to reduce public and private expense.

Section 208—Limitations of Authority

This section follows and expands the provisions of section 9 of the Administrative Procedure Act, 5 U. S. C. § 1008 (1952), limiting the imposition of agency sanctions. The title of the new section expresses the intention of the task force that its provisions should be "Limitations of Authority" upon the exercise of any agency power. Section 9 of the 1946 act, on the other hand, is entitled "Sanctions and Powers."

Section 208 (a)—In General.—This subsection is a substantive amplification of section 9 (a) of the present statute, which provides that no sanction shall be imposed or substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

Under the Code, no sanction shall be imposed and no substantive rule or order issued except within the letter, purpose, and intent of applicable statutes and the limitations of jurisdiction, powers, and authority prescribed by statute or otherwise imposed by law. In addition, agency action cannot be deemed by a court to be within the statutory authority or jurisdiction of that agency merely because such action is not contrary to the specific provisions of a statute. Imposition of a sanction or the issuance of a substantive rule or order must be

"(b) NOTICE BY RULE.—No sanction shall be imposed against a person for pursuing a normal, customary, or previously acceptable course of conduct, unless such conduct shall have been proscribed or restricted by a generally applicable rule of the agency. For such purposes, every agency is authorized to make and promulgate appropriate rules.

"(c) GOOD FAITH RELIANCE.—No sanction shall be imposed by any agency for any act done or omitted in good faith by any person in conformity with, or in reliance upon, any rule, or any advisory letter, opinion, or other written statement of the agency addressed in writing to such person and obtained by him without fraud or material misrepresentation, notwithstanding the fact that, after such act or omission has taken place, such rule, or such letter, opinion, or other written statement is modified, amended, rescinded, revoked, or held invalid by the agency for any reason. Agencies shall by rule designate the classes of officials who are authorized to issue advisory letters, opinions, and other written statements upon which reliance may be placed.

"(d) REPETITIOUS AGENCY PROCEEDINGS.—Not more than one hearing shall be held in any proceeding subject to section 205 of this Code except on remand by an agency to a presiding officer, or on remand by a reviewing court to the agency, or upon stipulation of all parties to the proceeding.

"(e) PUBLICITY.—Agency publicity, which a reviewing court finds was issued to discredit a person under investigation or a party to an agency proceeding, may be considered by the court as a prejudicial prejudging of the issues in controversy, and the court may set aside any action taken by the agency against such person or party or enter such further order as it deems appropriate in the premises.

based upon explicit statutory authority of Congress, and not merely upon the failure of a statute to prohibit such action.

Section 208 (b)—Notice by Rule.—Under this subsection, no sanction shall be imposed against a person for pursuing a normal, customary, or previously acceptable course of conduct, unless such conduct shall have been proscribed or restricted by a generally applicable rule of the agency. The subsection does not prohibit agencies from establishing policy by adjudication, but it does prevent the imposition of sanctions by an agency against a person, who has been pursuing a previously acceptable course of conduct, until such time as the agency proscribes such conduct by rule.

Section 208 (c)—Good Faith Reliance.—Under this subsection, no sanction may be imposed by an agency for any act done or omitted in good faith by any person in conformity with, or in reliance upon, any rule or any advisory letter, opinion, or other written statement of the agency addressed in writing to such person, notwithstanding the fact that after such act or omission has taken place, such rule or other written statement is modified, amended, rescinded, revoked, or held invalid by the agency.

The subsection protects agencies from fraud and misrepresentation by preventing the benefits of reliance where fraud or misrepresentation has been practiced in obtaining an advisory letter or other written statement. Further, any advisory statement must be addressed in writing to the person who exercises the reliance, and agencies are required by rule to designate the classes of officials who are authorized to issue such advisory rulings.

Section 208 (d)—Repetitious Agency Proceedings.—This new subsection of the Code forbids, any statute to the contrary notwithstanding, the holding of two formal adjudicatory hearings where one would suffice. The wastefulness of repetitious procedure, which is actually required under several statutes, is obvious.

Section 208 (e)—Publicity.—Under this subsection, where a reviewing court finds that agency publicity was issued to discredit a person under investigation or a party to an agency proceeding, the tribunal may consider such publicity as a prejudicial prejudging of the issues in controversy. It may set aside any action taken by the agency against

"(f) TERMS OF RULES AND ORDERS.—No court shall in any manner enforce any agency rule or order, or hold the same to be valid or effective, except within the literal, definite, and specific terms thereof. Every reviewing court shall declare any such rule or order to be unlawful if its terms (1) are vague, indefinite, or uncertain in any material respect, or (2) exceed the scope permissible upon the facts or the record on which such agency action is required to be made or sought to be justified.

"(g) PROCEEDINGS IN EXCESS OF JURISDICTION.—Any court of competent jurisdiction may intervene at any time to prevent by injunction or otherwise the holding or conducting of any agency proceeding in which the action proposed to be taken by the agency is beyond the constitutional or statutory jurisdiction or authority of the agency.

"TITLE III—OFFICE OF LEGAL SERVICES AND PROCEDURE

"ESTABLISHMENT

"SEC. 300. There shall be in the Department of Justice an Office of Legal Services and Procedure which shall be under the direction of an officer learned in the law to be known as the Director of the Office of Legal Services and Procedure.

"FUNCTIONS

"SEC. 301. The Director of the Office of Legal Services and Procedure shall issue directives to agencies (1) for the simplification, clarification, and uniformity of rules of substance and procedure, (2) for compliance with or making exceptions to such person or party or enter any further order it deems appropriate in the premises.

Section 208 (f)—Terms of Rules and Orders.—Under this subsection, no court may in any manner enforce any agency rule or order, or sustain the validity or effectiveness thereof, except within the literal, definite, and specific terms thereof, and a reviewing court shall declare any such rule or order to be unlawful and ineffective if its terms (1) are vague, indefinite, or uncertain in any material respect, or (2) exceed the scope permissible upon the facts or the record on which such agency action is required to be made or sought to be justified.

The first provision of this subsection requires agencies to be clear and definite in formulating rules and orders. The second provision requires agencies to act only within the facts of record in each case.

Section 208 (g)—Proceedings in Excess of Jurisdiction.—Under this new subsection, any court of competent jurisdiction may intervene, at any stage of an agency proceeding, to prevent by injunction the conduct of an agency case which contemplates action found by the court to be in excess of the constitutional or statutory authority or jurisdiction of the agency. It is designed to eliminate unnecessary administrative proceedings by authorizing courts to determine questions of jurisdiction whenever a justiciable controversy arises, instead of requiring parties to await the completion of administrative proceedings that will have been useless if the agency was acting ultra vires.

Title III—Office of Legal Services and Procedure

Section 300—Establishment

This section establishes an Office of Legal Services and Procedure in the Department of Justice. It is the counterpart of a similar provision, section 102, in the Legal Services Act. This Office is not only to perform services in the area of legal management throughout the executive branch, but also in the improvement of legal procedures.

Section 301—Functions

The Office is to assist agencies in the clarification, simplification, and uniformity of rules of sub-

the public information requirements of section 200 of this Code in accordance with the provisions of that section, and (3) for the furnishing of reports and statistical data relating to legal services and procedures of agencies. The Director shall perform such other duties as the Attorney General may prescribe.

"APPOINTMENT OF DIRECTOR

"SEC. 302. The Director of the Office of Legal Services and Procedure shall be appointed by the President, by and with the advice and consent of the Senate. His compensation shall be at the rate of $15,000 a year.

"INSPECTION

"SEC. 303. The Director of the Office of Legal Services and Procedure, or an assistant designated by him, shall have authority to examine the records, files, and dockets of agencies at all reasonable times in the performance of his duties under this title.

"COMPLIANCE

"SEC. 304. All agencies shall comply with directives and requests of the Director of the Office of Legal Services and Procedure issued or made in accordance with the provisions of this title.

"TITLE IV—ADMINISTRATIVE COURT OF THE UNITED STATES

"ESTABLISHMENT

"SEC. 400. There is hereby established a court of record which shall be known as the Administrative Court of the United States, hereinafter referred to as the 'Administrative Court'. The Court shall consist of two Sections, a Tax Section with sixteen judges, and a Trade Section with three judges. All judges of the Administrative Court shall be appointed by the President, by and with the advice and consent of the Senate, except that the judges of the Tax Court of the United States in office on the effective date of this Code are hereby transferred to the Tax Section of the Administrative Court and shall serve as judges thereof until their respective terms expire, or

stance and procedure, to assure compliance with the public information requirements of section 200 of the Code and authorize exceptions thereto, and to assemble information and statistical data relating to legal services and procedures in all agencies of the executive branch.

Section 302—Appointment of Director

The Director is to be appointed by the President, by and with the advice and consent of the Senate.

Section 303—Inspection

The Director is to have power to examine the records, files, and dockets of agencies for the purpose of performing the duties of his office.

Section 304—Compliance

All agencies are to comply with the lawful directives and requests of the Director.

Title IV—Administrative Court of the United States

Section 400—Establishment

This section establishes a court of record to be known as the Administrative Court of the United States to consist of two sections, a Tax Section with 16 judges and a Trade Section with 3 judges. Judges of the Tax Court of the United States on the effective date of the Code shall automatically become members of the Tax Section.

they shall retire or resign, or are otherwise removed from office in accordance with law. The President shall designate one of the judges of the Administrative Court as the Chief Judge of such Court. A vacancy in the office of Judge of such Court shall be filled in the same manner as in the case of an original appointment to such office. The Administrative Court shall have a seal which shall be judicially noticed.

"TENURE, SALARIES, AND OFFICIAL STATION OF JUDGES

"SEC. 401. Judges of the Administrative Court shall hold office during good behavior, except as otherwise provided in section 400 of this Code. The Chief Judge and each associate judge shall receive a salary at the rate of $15,000 a year. The official station of the judges of the Administrative Court shall be the District of Columbia.

Section 401—Tenure, Salaries, and Official Station of Judges

The compensation of the judges of the Administrative Court is to be the same as the $15,000 basic compensation for United States district judges. The former would hold office during good behavior.

"PRECEDENCE OF JUDGES

"SEC. 402. The Chief Judge of the Administrative Court shall have precedence and shall preside over the Administrative Court. In the absence or disability of the Chief Judge, other judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

Section 402—Precedence of Judges

This section establishes the order of precedence among the judges of the Administrative Court, which is substantially the same as that of judges in the Federal district courts and courts of appeals.

"RESIGNATION AND RETIREMENT OF JUDGES

"SEC. 403. The provisions of Chapter 17 of title 28 of the United States Code shall apply to the judges of the Administrative Court: *Provided,* That any judge serving on the Tax Court of the United States upon the effective date of this Code may elect in a writing filed with the Chief Judge of the Administrative Court within thirty days after the effective date of this Code to continue instead to be subject to the provisions of section 7447 of the Internal Revenue Code of 1954: *Provided further,* That service as a judge of the Tax Court and as a judge of the Administrative Court shall be credited for either purpose.

Section 403—Resignation and Retirement of Judges

This section adopts the provisions for resignation and retirement now in effect for United States district judges.

"SECTIONS AND DIVISIONS

"SEC. 404. (a) SECTIONS.—The Chief Judge of the Administrative Court may assign one or more judges of a Section of such Court to sit upon the other Section thereof whenever the business of the court so requires. Each Section shall elect a Presiding Judge thereof annually from among its members, but the Chief Judge of the Administrative Court shall not serve as Presiding Judge.

"(b) DIVISIONS.—The Presiding Judge of each Section may from time to time divide such Section into divisions of one or more judges, assign the judges of the Section thereto, and, in case of a division of more than one judge, designate a presiding judge thereof. If at any time a division, as a result of a vacancy or the absence or inability of a judge assigned thereto, is composed of less than the number of judges designated for the division, the Presiding Judge of such Section may assign other judges to the division, or may direct the division to proceed with the transaction of business without assigning any additional judges thereto if there is a quorum of such division without such assignment.

Section 404—Sections and Divisions

This provision authorizes the Chief Judge of the Administrative Court to assign one or more judges of one Section to sit upon the other Section whenever the business of the Court so requires. The Presiding Judge of each Section, elected annually by the members thereof, may divide his Section into divisions and assign the judges thereto.

"SESSIONS, QUORUM, AND VACANCIES

"SEC. 405. (a) SESSIONS.—The sessions of the Administrative Court and of each Section, division, and judge thereof may be held at such times and places within the United States as the court or Section may fix by rule.

"(b) QUORUM.—A majority of the judges of any Section of the Administrative Court or of any division of any such Section shall constitute a quorum for the transaction of the business of such Section or division, respectively.

"(c) VACANCIES.—A vacancy in any Section or in any division thereof shall not impair the powers or affect the duties of that Section or division, or of the remaining judges of the Section or division, respectively.

Section 405—Sessions, Quorums, and Vacancies

This section establishes the sessions of the Administrative Court, and provides for a majority of members to constitute the quorum of each Section and division and for filling vacancies.

"COUNCIL

SEC. 406. (a) ESTABLISHMENT.—The Chief Judge of the Administrative Court and the Presiding Judge of each Section thereof shall constitute collectively the Council of the Administrative Court, hereinafter referred to as the 'Council'.

Section 406—Council

The Chief Judge of the Administrative Court and the Presiding Judge of each Section are to constitute the Council of the Administrative Court. The Council will have important functions to per-

"(b) DUTIES.—The Council shall meet from time to time, upon call of the Chief Judge, to survey the condition of the business in the Sections of the Administrative Court. The Council shall prepare plans for the assignment of judges from Sections where necessary, shall review and approve or disapprove the rules of each Section, and shall submit suggestions to the various Sections in the interest of uniformity and expedition of business. The Council shall designate and appoint three or more members of the Administrative Court with exclusive jurisdiction to hear and determine, from time to time as the occasion may require, all cases or controversies respecting the selection, tenure, suspension, or discharge of hearing commissioners. The Council shall approve, disapprove, or modify such rules as the Chief Hearing Commissioner, provided for by section 500 of this Code, may propose with respect to personnel supervision of hearing commissioners.

"COURT COMMISSIONERS

"SEC. 407. (a) APPOINTMENT.—The Council shall appoint court commissioners in such numbers as may be required to enable each Section to exercise its jurisdiction. Each court commissioner shall receive compensation at the rate of $14,000 a year, and all necessary traveling expenses and reasonable maintenance expenses actually incurred while taking testimony or transacting other official business at a place other than his official station.

"(b) ASSIGNMENT.—The Chief Judge shall assign court commissioners as the business of each Section may require.

"(c) POWERS AND DUTIES.—Court commissioners may, in accordance with the rules and orders of the Administrative Court or any Section thereof, have and exercise all the powers of a judge of such Court, or such portion thereof as may be authorized.

"ADMINISTRATIVE OFFICE AND PERSONNEL

"SEC. 408. The principal administrative office of the Administrative Court and the Sections thereof shall be at the seat of the Government. The Council shall appoint a Chief Clerk and such other clerks, marshals, deputies, and employees as may be required to assist the Council, and the Administrative Court and the Sections, divisions,

form in administering the business of the Sections of the Administrative Court.

The Council likewise will serve as an independent judicial body to supervise the work of the Chief Hearing Commissioner appointed under title V of the Code. It will appoint three or more of its members to decide cases or controversies respecting the selection, tenure, suspension, or discharge of hearing commissioners. Rules with respect to personnel supervision of hearing commissioners, proposed by the Chief Hearing Commissioner, will be reviewed by the Council.

Section 407—Court Commissioners

It is anticipated that the Administrative Court will conduct much of its business through court commissioners who will have and exercise such powers of a judge of the Court as are accorded by its rules. They will submit their findings of fact and recommended conclusions of law to the judges for entry of final judgment, following the practice of the United States Court of Claims.

Section 408—Administrative Office and Personnel

This section authorizes the Council to appoint necessary administrative personnel for the Court and its Sections.

judges, and commissioners thereof, in the performance of their duties.

"POWERS AND PROCEDURE

"SEC. 409. (a) POWERS GENERALLY.—The Administrative Court and each Section, division, and judge thereof shall, in all actions and proceedings, possess all the powers of a district court of the United States, except as provided in subsection (b) of this section.

"(b) PROCEDURE GENERALLY.—Proceedings before the Administrative Court and before any Section, division, judge, or commissioner thereof shall be governed by the Rules of Civil Procedure for the District Courts of the United States to the extent practicable. Such rules may be supplemented by rules adopted by the Administrative Court, and by its Sections with the approval of the Council. There shall be no right to have issues of fact determined by a jury in any action or proceeding in the Administrative Court.

"(c) REPORTS BY COURT COMMISSIONERS.—The appropriate Section of the Administrative Court shall provide opportunity for any party to file exceptions to a court commissioner's decision, report of findings, or recommendations for conclusions of law, and to have a hearing thereon which may be oral or written as the Section shall prescribe by rule, within such reasonable time as the Section shall prescribe. Commissioners shall, in accordance with the rules and orders of the court, fix times for hearings, administer oaths, examine witnesses, receive evidence, and report findings of fact and recommendations for conclusions of law in cases assigned to them.

"JURISDICTION

"SEC. 410. (a) TRADE SECTION.—The Trade Section of the Administrative Court shall have jurisdiction to conduct proceedings, render judgments, and issue orders under the following statutes:

"(1) Section 11 of the Clayton Act (38 Stat. 734), as amended (U.S.C., title 15, sec. 21);

"(2) Section 5 of the Federal Trade Commission Act (38 Stat. 719), as amended (U.S.C., title 15, sec. 45);

"(3) Section 411 of the Civil Aeronautics Act (52 Stat. 1003), as amended (U.S.C., title 49, sec. 491);

Section 409—Powers and Procedures

This section confers upon the Administrative Court the general power of a district court of the United States. The rules of civil procedure for the district courts are to be followed to the extent practicable.

Section 410—Jurisdiction

Section 410 (a)—Jurisdiction of Trade Section.—The Trade Section of the Administrative Court is to exercise jurisdiction over certain cases now handled administratively by the Federal Trade Commission and seven other commissions and departments in the area of trade regulation. The objective is to bring together in one forum the adjudication of cases involving charges of violation of the Clayton Act, of unfair methods of competition, or of unfair and deceptive trade practices.

"(4) Section 337 (c) of the Tariff Act of 1930 (46 Stat. 703), as amended (U.S.C., title 19, sec. 1337 (c));

"(5) Section 314 (c) of the Federal Power Act, as amended (U.S.C., title 16, sec. 825m);

"(6) Section 312 (b) of the Communications Act (48 Stat. 1086), as amended (U.S.C., title 47, sec. 312 (b));

"(7) Section 2 of the Act of June 25, 1934 (48 Stat. 1214), as amended (U.S.C., title 15, sec. 522);

"(8) Sections 203 and 205 of the Packers and Stockyards Act (42 Stat. 161), as amended (U.S.C., title 7, sec. 193); and

"(9) Section 2 of the Act of February 18, 1922 (42 Stat. 388), (U.S.C., title 7, sec. 292).

"(b) TAX SECTION.—The Tax Section of the Administrative Court shall have the same jurisdiction as provided by law on the effective date of this Code for the Tax Court of the United States. Every statutory reference to the Tax Court shall be deemed to apply to the Administrative Court, Tax Section, except where inconsistent with a provision of this Code, in which event the provisions of this Code shall apply. Any case pending in the Tax Court of the United States upon the effective date of this Code shall continue for all purposes as a case in the Tax Section of the Administrative Court.

Section 410 (b)—Jurisdiction of Tax Section.—The Tax Section of the Administrative Court is to have the same jurisdiction as now provided by law for the Tax Court of the United States.

"REVIEW

"SEC. 411. A party to a proceeding before the Administrative Court, or any Section, division, or judge thereof, may obtain review of any judgment or order entered therein in the court of appeals of the United States within any circuit in which (1) the act or practice in question occurred, (2) the party resides or is engaged in business, or (3) the proceeding was heard by a judge or commissioner of the Administrative Court. The court of appeals shall review such judgment or order in the same manner and to the same extent as decisions of the United States district courts in civil nonjury cases are reviewed. The judgment of the court of appeals shall be final, except that it shall be subject to review by the Supreme Court of the United States in the manner provided in section 1254 of title 28 of the United States Code.

Section 411—Review

Any party to a proceeding before the Administrative Court or any section thereof is to have opportunity for review of the judgment of the Administrative Court in a United States court of appeals. Venue would lie in any circuit in which (1) the act or practice in question occurred, (2) the party resides or is engaged in business, or (3) the proceeding was heard by a judge or court commissioner of the Administrative Court.

"REPRESENTATION

"SEC. 412. (a) UNITED STATES.—In any proceeding before the Administrative Court, or any Section, division, or judge thereof, the United States shall be represented either by the chief legal officer of the agency which initiated the proceeding, if his appointment was made pursuant to specific statutory authority therefor, or by the Attorney General.

"(b) PRIVATE PARTIES.—Private parties shall be represented by attorneys-at-law in all proceedings for any purpose in the Administrative Court; except that any person who is licensed to appear before the Tax Court of the United States upon the effective date of this Code may continue to represent private parties before the Tax Section of such Court.

"TITLE V—HEARING COMMISSIONERS

"CHIEF HEARING COMMISSIONER

"SEC. 500. There shall be attached to the Administrative Court an officer learned in the law to perform duties relating to the personnel supervision of the senior hearing commissioners and the hearing commissioners provided for in section 502 of this Code. He shall be called the Chief Hearing Commissioner, shall be appointed by the President, by and with the advice and consent of the Senate, for a term of twelve years, and shall receive a salary at the rate of $15,000 a year. During his term of office, the Chief Hearing Commissioner may be removed only for cause, by and after opportunity for hearing before the Council established by section 406 of this Code, and upon the grounds specified in section 507 (a) hereof.

"ADVISORY COMMITTEE

"SEC. 501. There shall be an Advisory Committee to the Chief Hearing Commissioner, hereinafter referred to as the 'committee', which shall be appointed by the Council of the Administrative Court. The committee shall consist of five mem-

Section 412—Representation

Section 412 (a)—United States.—The Government can only be represented in the Administrative Court by the General Counsel or other chief legal officer, appointed pursuant to statute, of the agency concerned, or by the Attorney General. Where the position of chief legal officer of an agency lacks specific statutory authority, the Attorney General would handle the case. The Chief Counsel of the Internal Revenue Service would continue to represent the United States before the Tax Section of the Court.

Section 412 (b)—Private Parties.—Since the Administrative Court is to be a court of record, representation of private parties before the tribunal would be by attorneys-at-law. However, an appropriate "grandfather clause" is provided to enable other persons licensed to appear before the Tax Court on the effective date of the Code to continue to represent private parties before the Tax Section.

Title V—Hearing Commissioners

Section 500—Chief Hearing Commissioner

The Chief Hearing Commissioner is to be attached to the Administrative Court and is to perform duties relating to the personnel supervision of the senior hearing commissioners and hearing commissioners provided for in the Administrative Code. He is to be appointed by the President, by and with the advice and consent of the Senate, and to serve for a term of 12 years. He will be subject to removal during the period of his term by the Council for good cause.

Section 501—Advisory Committee

The Chief Hearing Commissioner is to be assisted and advised by a bipartisan, five-member Advisory Committee, upon which there is to be representation of the agencies, of the bar, and of the Administrative Court itself. This Committee

bers, not more than three of whom shall be members of the same political party. The chairman of the committee shall be a judge of the Administrative Court, two members thereof shall be officials of agencies, and the other two members shall be attorneys-at-law experienced in representing persons, parties, or organizations before agencies. Four members of the committee shall constitute a quorum. The Administrative Court shall provide such facilities and services as the committee shall require. The committee shall prepare, publish, and periodically review and modify, as it deems advisable, qualifications for the apointment of senior hearing commissioners and hearing commissioners.

"HEARING COMMISSIONERS

"SEC. 502. There shall be such number of senior hearing commissioners and hearing commissioners as the Chief Hearing Commissioner, in consultation with the agencies concerned, determines to be necessary to conduct the hearings for agencies pursuant to sections 205 and 206 of this Code. The term 'hearing commissioner' as hereinafter used in this title includes hearing commissioner and senior hearing commissioner unless otherwise indicated.

"APPOINTMENT

"SEC. 503. (a) FORMER HEARING EXAMINERS.—Initial appointments of hearing commissioners shall be made exclusively from persons who have served as examiners under section 11 of the Administrative Procedure Act for a period of at least one year immediately preceding the effective date of this Code. No other person shall be appointed a hearing commissioner until the expiration of two years from the effective date of this Code, unless within such period all such examiners have been given the opportunity of appointment as hearing commissioners.

"(b) TEMPORARY APPOINTMENT.—All examiner positions heretofore established or existing pursuant to section 11 of the Administrative Procedure Act are hereby terminated. A person serving as an examiner under such section 11 may be retained as a temporary hearing commissioner until he is appointed a hearing commissioner under this Code. Temporary hearing commissioners may be removed either because of reduction in force or

is to determine the qualifications for the appointment of the senior hearing commissioners and the hearing commissioners, and, as such, will have important responsibility in the maintaining of high standards for appointment to these positions.

Section 502—Hearing Commissioners

Under this section, there are to be such number of senior hearing commissioners and hearing commissioners as are necessary to conduct formal rule making and adjudicatory hearings for agencies pursuant to sections 205 and 206 of the Code.

Section 503—Appointment

Section 503 (a)—Former Hearing Examiners.—The persons who are now serving as hearing examiners should have the first opportunity of appointment to the new positions of hearing commissioners. Consequently, no other person is to be appointed a hearing commissioner until the expiration of 2 years from the effective date of the Administrative Code unless, within such period, all present examiners have been given the opportunity of appointment as hearing commissioners.

Section 503 (b)—Temporary Appointment.—A person now serving as an examiner may be retained as a temporary hearing commissioner for 2 years unless and until he is appointed a hearing commissioner under the Code. Temporary hearing commissioners may be removed either because of reduction in force or for cause.

for cause. Removal for cause shall be in accordance with the procedures prescribed by section 507 of this Code. No person who is serving as a temporary hearing commissioner shall receive increased compensation by reason of the enactment of this Code.

"(c) PERMANENT APPOINTMENT.—Hearing commissioners shall be nominated for appointment by the Chief Hearing Commissioner, who shall submit the name of each nominee to the committee together with the complete file of information upon the basis of which the nomination was made. The committee shall meet upon call of its chairman and shall, within thirty days after receipt of the nomination, certify that the nominee is or is not qualified for appointment. The committee may interview the nominee and other informed persons. If, by majority vote of the members present, the committee shall disapprove the nominee as not qualified, the nominee shall not be appointed. If the committee shall approve the nomination, the Chief Hearing Commissioner shall forthwith appoint the person to the position for which he was nominated.

Section 503 (c)—Permanent Appointment.—Permanent appointments of hearing commissioners are to be made by the Chief Hearing Commissioner subject to the approval of the Advisory Committee. The Chief Hearing Commissioner will select persons who meet the standards specified by the Advisory Committee and who are, in his judgment, fully qualified to serve as hearing commissioners. His judgment in this respect will be subject to evaluation by the Advisory Committee, which may disapprove the nominee by a majority vote.

"ASSIGNMENT

"SEC. 504. The Chief Hearing Commissioner shall require all agencies to utilize hearing commissioners for hearings required by law to be conducted by hearing commissioners, and no agency shall utilize hearing commissioners for any other purpose. Any conflict between an agency and the Chief Hearing Commissioner in this respect shall be resolved by the Council of the Administrative Court of the United States. The Chief Hearing Commissioner shall assign and transfer hearing commissioners to and from agencies as he may determine to be necessary for the most efficient conduct of the hearings required to be held by such agencies.

Section 504—Assignment

The Chief Hearing Commissioner is to have the authority to assign hearing commissioners to agencies and to reassign hearing commissioners as necessary for the most efficient conduct of hearings. It is anticipated that hearing commissioners will be assigned to agencies on a semipermanent basis, and that they will not be reassigned except for unusual circumstances.

Nevertheless, the authority vested in the Chief Hearing Commissioner to reassign hearing commissioners is an important one in the interest of the most efficient utilization of this expert personnel. If an agency needs an increased number of hearing commissioners, the Chief Hearing Commissioner should be able to assist that agency by directing the transfer of a hearing commissioner from some other agency.

"COMPENSATION

"SEC. 505. Hearing commissioners shall receive compensation at the rate of $12,000 a year. Senior hearing commissioners shall receive compensation at the rate of $14,000 a year.

Section 505—Compensation

This section provides for two grades of hearing commissioners. Hearing commissioners will receive a salary of $12,000 a year. Senior hearing commissioners will receive compensation of $14,000 a year.

"TENURE

"SEC. 506. Hearing commissioners shall be appointed for terms of eight years. Senior hearing commissioners shall serve during good behavior.

Section 506—Tenure

Senior hearing commissioners are to have life tenure, and hearing commissioners are to be appointed for 8-year terms.

"SUSPENSION AND REMOVAL

"SEC. 507. (a) GROUNDS.—Hearing commissioners shall be suspended or removed only for incompetence, neglect of duty, misconduct in office, misconduct out of office involving moral turpitude, or physical or mental disability, which shall be determined after opportunity for hearing as hereinafter provided.

Section 507—Suspension and Removal

Section 507 (a)—Grounds.—Under this section, hearing commissioners can only be removed for incompetence, neglect of duty, misconduct in office, misconduct out of office involving moral turpitude, or physical or mental disability.

"(b) PROCEDURE.—All complaints against hearing commissioners shall be submitted to the Chief Hearing Commissioner. If in his judgment a complaint may warrant the suspension or removal of a hearing commissioner, the Chief Hearing Commissioner shall prepare charges and specifications which he shall file with the clerk of the Administrative Court of the United States, who shall set the matter for hearing before the committee of judges named for that purpose by the Council of the Administrative Court, and who shall cause a copy of the charges and specifications and notice of hearing to be served upon the hearing commissioner involved. An order of supension or removal of a hearing commissioner by the committee of judges shall be final, and the hearing commissioner against whom such order is made shall be forthwith suspended or removed. Within sixty days thereafter such hearing commissioner may request review of the order by the Council, sitting in banc. If the Council grants the request, it may consider the same according to any procedure it deems appropriate. After such consideration, the Council may order the hearing commissioner reinstated under such conditions as it may reasonably require, or it may confirm the order of suspension or removal.

Section 507 (b)—Procedure.—The procedure is to have complaints submitted first to the Chief Hearing Commissioner, who may then file charges and specifications with the Administrative Court of the United States. The matter will be heard by a committee of judges named for that purpose by the Council of the Administrative Court.

"CALENDAR AND REPORTS

"SEC. 508. A master calendar of agency hearings, open for public inspection, shall be maintained in the office of the Chief Hearing Commissioner. Agencies shall provide the Chief Hearing Commissioner with any information which he shall require to maintain such calendar in an active and current status and with such other information

Section 508—Calendar and Reports

The Chief Hearing Commissioner must have information concerning the calendars of the several agencies. He must likewise maintain a master calendar of agency hearings for public information. Authority to obtain agency information necessary for these calendars is provided in this section.

and statistical data as he shall reasonably require with respect to the work of the hearing commissioners.

"TITLE VI—APPEARANCE AND REPRESENTATION

"APPEARANCE

"SEC. 600. Every party to an agency proceeding shall be accorded the right to appear in person or by or with any attorney-at-law in good standing or, where permitted by agency rule, by any other duly qualified representative; and any person appearing in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by any attorney-at-law in good standing or, where permitted by agency rule, by any other duly qualified representative. Any threatened or continuing denial of such rights may, on application to any court of competent jurisdiction, be corrected by an appropriate order of such court.

"GENERAL STANDARDS OF CONDUCT

"SEC. 601. (a) IN GENERAL.—Every individual who for any fee, salary, or other compensation, paid directly or indirectly, holds himself out as one who represents any public or private person, party, or organization, including the United States or any agency thereof, before any agency shall not—

"(1) directly or indirectly solicit clients;

"(2) advertise in any manner his attainments or services in representing others before an agency, except as expressly authorized by rule of the agency;

"(3) communicate privately with any agency, or with any members, representatives, or presiding officer thereof, with respect to the disposition of a contested case, action, or proceeding; or discuss the merits of such contested case, action, or proceeding with the agency, or with any member or presiding officer thereof in the absence of his adversary or without notice to his adversary;

"(4) attempt to sway the judgment or to influence the action of any agency, any of its officials or employees, or any presiding officer (i) by the use of threats, false accusations, or duress, (ii) by the offer of any special inducement or promise of advantage, (iii) by the bestowing of any gift or favor or other thing of value, (iv)

Sectional Analysis

Title VI—Appearance and Representation

Section 600—Appearance

This section substantially reenacts section 6 (a) of the Administrative Procedure Act, 5 U. S. C. § 1005 (a) (1952), governing the rights of persons to appear and be represented before agencies. The major change is a provision requiring agencies to permit representation by an attorney-at-law in good standing in any and all agency proceedings, investigatory, informal, and formal, or, where permitted by agency rule, by any other duly qualified representative. A sentence has been added to permit a person, whose rights in this respect are not accorded by an agency, the remedy of application to a court of competent jurisdiction for an appropriate order.

Section 601—General Standards of Conduct

This section sets forth the minimum standards of conduct which, in the opinion of the task force, should be imposed by statute upon all individuals, nonlawyers as well as lawyers, who represent persons or parties before agencies of the executive branch.

Section 601 (a)—In General.—This subsection sets forth six general standards of conduct which are to be made statutory and to govern the conduct of lawyers and nonlawyers in handling cases for compensation before administrative agencies. The purpose is to establish minimum standards to which all persons engaged in representing others before agencies must conform. These provisions generally prohibit solicitation of clients, advertising professional attainments or services, private and ex parte communications with hearing and deciding officers, use of improper or undue influence in attempting to sway the judgment or to influence the action of any agency, improper or indecorous conduct at hearings, and the filing of a false statement by an attorney-at-law under Section 602 of the Code.

by enlisting the influence or intercession of public officers, or (v) by threats of political or personal reprisal;

"(5) engage in improper or indecorous conduct in the presence of a presiding officer in any agency proceeding; or,

"(6) if any attorney-at-law, file a false statement or fail to file any statement or amended statement in conformity with section 602 of this Code.

Every agency shall issue rules to implement this subsection.

"(b) CONFLICT OF INTEREST.—Except as otherwise provided by statute, (1) no individual shall represent or hold himself out as representing any person, party, or organization, other than the United States or any agency thereof, before any agency or court of the United States in any agency proceeding, or in the judicial review or enforcement thereof, as to which that individual, while an employee of the United States, personally and in his official capacity dealt with, passed upon, or gained knowledge of the facts concerning such proceeding, or in the judicial review or enforcement thereof, and (2) no individual, while an employee of the United States, shall represent or hold himself out as representing any person, party, or organization other than the United States or any agency thereof before any agency or court of the United States; except that the agency which employs such individual may permit him to engage in outside legal activities in connection with legal matters involving his own family to the extent that the agency finds that such activities will not interfere with the performance of his official duties.

"REPRESENTATION BY ATTORNEYS-AT-LAW

"SEC. 602. (a) STATEMENT.—No attorney-at-law shall be entitled to appear for or represent any public or private person, party, or organization, including the United States or any agency thereof, before any agency, except upon the filing with such agency of a statement that he is a member in good standing of the bar of the highest court of a State, Territory, Commonwealth, or Possession of the United States or of the District of Columbia, and that he is not under suspension by such agency. No other requirement for the appearance before it of any attorney-at-law shall be imposed by any

Section 601 (b)—Conflict of Interests.—This subsection prohibits a person who was an employee of the United States and who in an official capacity dealt with, passed upon, or gained knowledge of facts concerning a particular proceeding, from thereafter representing a person in an action against the United States in that proceeding. It also prevents an employee of the United States from holding himself out as representing any person, party, or organization other than the United States or an agency thereof before any agency or court of the United States.

Section 602—Representation by Attorneys-at-Law

This section establishes a single requirement for the appearance by attorneys-at-law before all agencies of the United States. That requirement is the filing with each agency of a statement that the attorney is a member in good standing of the bar of the highest court of a State, Territory, Commonwealth, or possession of the United States, or of the District of Columbia, and that he is not under suspension by such agency. A change in professional status requires the filing of an amended statement.

agency, except that any agency may require the filing of a power of attorney by any attorney-at-law as a prerequisite to the settlement of any controversy.

"(b) EFFECT OF FILING.—Every agency shall recognize and deal directly with an attorney-at-law who has filed with it the statement required by subsection (a) hereof, with respect to any matters concerning which he states that he represents a person, party, or organization before such agency.

"(c) AMENDED STATEMENT.—An attorney-at-law who has filed with an agency the statement required by subsection (a) hereof shall file an amended statement with the agency to reflect any material change in his status as an attorney-at-law prior to any further act of representation before the agency.

"DISCIPLINE OF ATTORNEYS-AT-LAW

"SEC. 603. (a) FEDERAL GRIEVANCE COMMITTEE.—There shall be appointed by the Chief Judge of the United States Court of Appeals for the District of Columbia a Federal Grievance Committee, hereinafter referred to as the 'Committee', consisting of five attorneys-at-law, all of whom shall be members in good standing of the bar of a United States district court. Not more than three members of the Committee shall belong to the same political party, and not more than two members of the Committee shall be employees of the United States. Members shall serve for such terms as the Chief Judge shall provide at the time of appointment, but no such term shall exceed three years.

"(b) DUTIES OF COMMITTEE.—The Committee shall receive complaints against attorneys-at-law arising out of the representation before agencies of any public or private person, party, or organization, including the United States and any agency thereof. The Committee shall investigate all complaints filed in good faith, except that complaints filed against Government attorneys shall be first referred to the Director of the Office of Legal Services and Procedure, established pursuant to Title III of this Code, for such investigation as he may desire to make. After investigation, the Committee may dismiss the complaint with or without public notice; or, for any violation of the general standards of conduct set forth in section 601 of

Section 603—Discipline of Attorneys-at-Law

Section 603 (a)—Federal Grievance Committee.—This subsection establishes a bipartisan Federal Grievance Committee of 5 members, appointed by the Chief Judge of the United States Court of Appeals for the District of Columbia. No more than 2 members may be Government attorneys.

Section 603 (b)—Duties of Committee.—The Committee will receive complaints against attorneys-at-law with respect to their actions before Federal agencies, and will investigate such complaints. In the case of Government attorneys, the complaint will be referred to the Director of the Office of Legal Services and Procedure for recommendation. After investigation, the Committee would be empowered to dismiss the complaint with or without public notice, issue a private or public reprimand, institute disciplinary proceedings in a United States district court as provided in section 603 (e), or refer the matter for disciplinary action by the appropriate authority of the jurisdiction in which the attorney is licensed to practice law.

this Code or of the standards of professional conduct of any bar of which such attorney-at-law is a member, it may (1) issue a private reprimand, (2) issue a public reprimand, (3) initiate disciplinary proceedings as provided in subsection (e) hereof, or (4) refer the matter for disciplinary action to the appropriate authority in the State, Territory, Commonwealth, or Possession, or the District of Columbia, in which the attorney is licensed to practice law.

"(c) COMMITTEE POWERS.—The Committee shall have the power to promulgate rules and regulations, administer oaths and affirmations, issue subpenas for the attendance of witnesses and the production of relevant evidence, establish procedures, conduct nonpublic hearings, and require the submission of relevant information from any agency.

Section 603 (c) and (d)—Powers and Assistance.—The Committee is granted general powers necessary to conduct investigations and perform its other duties. Facilities and services are to be provided by the Office of Legal Services and Procedure in the Department of Justice.

"(d) ASSISTANCE.—The Director of the Office of Legal Services and Procedure established pursuant to Title III of this Code shall provide the Committee with such facilities and services as the Committee may reasonably request.

"(e) DISCIPLINARY PROCEEDINGS.—The United States district court of the judicial district in which an attorney-at-law is principally engaged in the practice of law shall have jurisdiction to hear and determine disciplinary proceedings instituted by the Committee against such attorney-at-law and to reprimand or to suspend or disbar him from practice before all agencies for violation of the general standards of conduct set forth in section 601 of this Code, or of the standards of professional conduct of any bar of which the attorney is a member.

Section 603 (e)—Disciplinary Proceedings.—Disciplinary proceedings are to be initiated in the United States district court of the judicial district in which the attorney is principally engaged in the practice of law. That court may reprimand the attorney or suspend or disbar him from practice before all agencies for violation of the general standards of conduct set forth in the Code, or of the standards of professional conduct of any bar of which the attorney is a member.

"(f) AGENCY ACTION.—For violation of the general standards of conduct set forth in section 601 of this Code, or for violation of such other standards of conduct as the agency in the public interest may prescribe by rule, any agency may suspend, for a period of not to exceed one year, the right of an attorney-at-law to appear before that agency, or to represent before it any public or private person, party, or organization, including the United States or any agency thereof. The United States District Court for the District of Columbia shall have jurisdiction to review in a subsequent trial of the law and facts de novo any such order of suspension issued by the agency.

Section 603 (f) and (g)—Agency Action and Notification.—Each agency is to have authority to suspend an attorney-at-law from appearance before it for a period of not to exceed 1 year. Appropriate provision is made for the notification of the State bar of which the attorney is a member of any disciplinary action thus taken against him by the Federal Grievance Committee, a Federal court, or an agency.

"(g) NOTIFICATION.—The appropriate authority of every State, Territory, Commonwealth, or Possession of the United States, or of the District of Columbia, in which an attorney-at-law is licensed to practice law, shall be notified (1) by the Committee of any public reprimand issued by the Committee against such attorney, (2) by the agency of any order of suspension entered by the agency against such attorney, and (3) by the United States district court of any reprimand, suspension, or disbarment entered by the court against such attorney in any proceeding instituted by the Committee.

"REPRESENTATION BY PERSONS OTHER THAN ATTORNEYS-AT-LAW

"SEC. 604. (a) PERSONS ENTITLED.—Individuals other than attorneys-at-law may be authorized by any agency to appear for or represent a public or private person, party, or organization before it, so long as and to the extent that such agency (1) shall find such representation appropriate and desirable in the public interest, as well as in the interest to the parties to agency proceedings, (2) is not otherwise precluded by law from so doing, and (3) provides by general rules for such representation. The agency may make such investigation or examination as it deems necessary to determine that the applicant possesses necessary competence and understanding of ethical responsibilities and is of good moral character and repute. Nothing contained in this Code shall be construed as authorizing persons not members of the bar to practice law or to hold themselves out, impliedly or expressly, as authorized so to do.

"(b) DISCIPLINE.—Any agency before which a person other than an attorney-at-law appears for or represents any public or private person, party, or organization shall have authority to revoke or suspend the privilege of representation by such person before the agency for violation of the general standards of conduct set forth in section 601 of this Code, of subsection (a) hereof, or of such other standards of conduct as the agency may in the public interest prescribe by rule.

"(c) JUDICIAL REVIEW.—An order revoking or suspending the privilege of representation extended to any such person by rule of the agency shall be reviewable by the United States District

Section 604—Representation by Persons Other Than Attorneys-at-Law

Persons who are not attorneys-at-law may be authorized by the agency to engage in representation before the agency where appropriate and desirable in the public interest, not precluded by law, and provided by general rules. The discipline of such persons is by this section left to each agency, with judicial review by trial de novo in the United States District Court for the District of Columbia.

Court for the District of Columbia in a subsequent trial of the facts and the law de novo.

"TITLE VII—GENERAL PROVISIONS

"CONSTRUCTION AND EFFECT

"SEC. 700. Nothing in this Code shall be held to diminish the constitutional rights of any person or to limit or repeal any additional requirements imposed by statute or otherwise recognized by law. Except as otherwise recognized by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency shall have all the powers necessary to enable it to carry out the provisions of this Code, including the authority to make and enforce rules thereunder. The affirmative requirements and specific prohibitions of this Code shall be broadly construed, and exemptions from, and exceptions to, this Code shall be narrowly construed.

"PENALTIES

"SEC. 701. (a) FORFEITURES.—A claim against the United States before any agency thereof shall be forfeited to the United States by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of such claim. In such cases, the agency shall specifically find such fraud or attempt and incorporate an order of forfeiture in its decision.

"(b) CRIMINAL PENALTIES.—The provisions of sections 287, 1001, 1621, and 1622, title 18, United States Code, shall be applicable in agency proceedings instituted in accordance with the provisions of this Code.

"SEPARABILITY

"SEC. 702. If any provision of this Code or the application thereof to any person or circumstance is held invalid, the remainder of this Code and the application of such provision to other persons or circumstances shall not be affected thereby.

"EFFECTIVE DATE

"SEC. 703. This Code shall take effect on the 180th day after the date of its enactment. No procedural requirement herein provided for shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement."

Title VII—General Provisions

Section 700—Construction and Effect

This section contains general provisions governing the construction to be given to the Code. The most important of these is that the affirmative requirements and specific prohibitions of the Code shall be broadly construed, and exemptions therefrom and exceptions thereto narrowly construed.

Section 701—Penalties

Section 701 (a)—Forfeitures.—This subsection is designed to protect agencies from fraud and misrepresentation under the expanded use of declaratory orders, written advisory opinions, and written submittals of evidence recommended by the task force. Any claims against the United States are to be forfeited where such fraud or misrepresentation is proved in a criminal action filed by the Attorney General.

Section 701 (b)—Penalties.—Further protection is provided for agencies in this subsection. Criminal statutes prohibiting the presentation of false claims, concealing material facts, and subornation of perjury, 18 U. S. C. §§ 287, 1001, and 1622 (1952), are made applicable to agency proceedings under the Code.

Section 702—Separability

This section provides that the invalidation of a provision of the Code shall not affect other portions of the Code.

Section 703—Effective Date

In order to give agencies time to prepare for compliance with the Code and to enable the Administrative Court to be established, the Code does not take effect until 180 days after its enactment. Proceedings initiated before that date would, of course, be governed by prior applicable law and not by the Code.